

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 959
92ND GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organization, Veterans' Affairs and Elections, April 23, 2004, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3502S.04C

AN ACT

To repeal sections 33.103, 166.415, 166.435, 408.032, 408.140, 408.190, 408.232, 443.130, 506.290, and 541.033, RSMo, and sections 570.223 and 570.224 as truly agreed to and finally passed by the second regular session of the ninety-second general assembly in senate committee substitute for house bill no. 916, and to enact in lieu thereof thirty-two 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, 166.415, 166.435, 408.032, 408.140, 408.190, 408.232, 443.130, 506.290, and 541.033, RSMo, and sections 570.223 and 570.224 as truly agreed to and finally passed by the second regular session of the ninety-second general assembly in senate committee substitute for house bill no. 916, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 33.103, 166.415, 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525,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, 362.191, 369.176, 408.032, 408.140, 408.178, 408.190, 408.232, 408.480, 427.225, 432.047, 443.130, 506.290, 541.033, 570.223, 570.224, and 1, 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 employee's participation in the plan or collective bargaining dues, provided that such dues

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

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

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

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

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

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

26 (4) Any amount determined to be owed by the employee to the state in accordance
27 with guidelines established by the commissioner of administration which shall include
28 notice to the employee and an appeal process;

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

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

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

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

43 (1) Include as an option in the plan any employee benefit, otherwise available to

44 state employees, administered by a statutorily created retirement system;

45 (2) Provide and administer, or select companies on the basis of competitive bids
46 or proposals to provide or administer, any group insurance, or other plan which may be
47 included as part of a cafeteria plan, provided such plan is not duplicative of any other
48 plan, otherwise available to state employees, administered by a statutorily created
49 retirement system; and

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

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

166.415. 1. There is hereby created the "Missouri Higher Education Savings
2 Program". The program shall be administered by the Missouri higher education savings
3 program board which shall consist of the Missouri state treasurer who shall serve as
4 chairman, the commissioner of the department of higher education, the commissioner of
5 the office of administration, the director of the department of economic development
6 [and], two persons having demonstrable experience and knowledge in the areas of
7 finance or the investment and management of public funds, one of whom is selected by
8 the president pro tem of the senate and one of whom is selected by the speaker of the
9 house of representatives[.], **and one person having demonstrable experience and**
10 **knowledge in the area of banking or deposit rate determination and**
11 **placement of depository certificates of deposit or other deposit**
12 **investments. Such member shall be appointed by the governor with the**
13 **advice and consent of the senate.** The [two] three appointed members shall be
14 appointed to serve for terms of four years from the date of appointment, or until their
15 successors shall have been appointed and shall have qualified. The members of the
16 board shall be subject to the conflict of interest provisions of section 105.452, RSMo. Any
17 member who violates the conflict of interest provisions shall be removed from the board
18 order to establish and administer the savings program, the board, in addition to its other
19 powers and authority, shall have the power and authority to:

20 (1) Develop and implement the Missouri higher education savings program and,
21 notwithstanding any provision of sections 166.400 to 166.455 to the contrary, the savings
22 programs and services consistent with the purposes and objectives of sections 166.400
23 to 166.455;

24 (2) Promulgate reasonable rules and regulations and establish policies and
25 procedures to implement sections 166.400 to 166.455, to permit the savings program to
26 qualify as a "qualified state tuition program" pursuant to Section 529 of the Internal
27 Revenue Code and to ensure the savings program's compliance with all applicable laws;

28 (3) Develop and implement educational programs and related informational
29 materials for participants, either directly or through a contractual arrangement with a
30 financial institution for investment services, and their families, including special
31 programs and materials to inform families with young children regarding methods for
32 financing education and training beyond high school;

33 (4) Enter into agreements with any financial institution, the state or any federal
34 or other agency or entity as required for the operation of the savings program pursuant
35 to sections 166.400 to 166.455;

36 (5) Enter into participation agreements with participants;

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

40 (7) Invest the funds received from participants in appropriate investment
41 instruments to achieve long-term total return through a combination of capital
42 appreciation and current income;

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

45 (9) Make refunds to participants upon the termination of participation
46 agreements pursuant to the provisions, limitations, and restrictions set forth in sections
47 166.400 to 166.455 and the rules adopted by the board;

48 (10) Make provision for the payment of costs of administration and operation of
49 the savings program;

50 (11) Effectuate and carry out all the powers granted by sections 166.400 to
51 166.455, and have all other powers necessary to carry out and effectuate the purposes,
52 objectives and provisions of sections 166.400 to 166.455 pertaining to the savings
53 program; and

54 (12) Procure insurance, guarantees or other protections against any loss in
55 connection with the assets or activities of the savings program.

56 2. Any member of the board may designate a proxy for that member who will
57 enjoy the full voting privileges of that member for the one meeting so specified by that
58 member. No more than three proxies shall be considered members of the board for the
59 purpose of establishing a quorum.

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

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

70 5. The funds shall be invested only in those investments which a prudent person
71 acting in a like capacity and familiar with these matters would use in the conduct of an
72 enterprise of a like character and with like aims, as provided in section 105.688,
73 RSMo. The board may delegate to duly appointed investment counselors authority to act
74 in place of the board in the investment and reinvestment of all or part of the moneys and
75 may also delegate to such counselors the authority to act in place of the board in the
76 holding, purchasing, selling, assigning, transferring or disposing of any or all of the
77 securities and investments in which such moneys shall have been invested, as well as
78 the proceeds of such investments and such moneys. Such investment counselors shall
79 be registered as investment advisors with the United States Securities and Exchange
80 Commission. In exercising or delegating its investment powers and authority, members
81 of the board shall exercise ordinary business care and prudence under the facts and
82 circumstances prevailing at the time of the action or decision. No member of the board
83 shall be liable for any action taken or omitted with respect to the exercise of, or
84 delegation of, these powers and authority if such member shall have discharged the
85 duties of his or her position in good faith and with that degree of diligence, care and skill
86 which a prudent person acting in a like capacity and familiar with these matters would
87 use in the conduct of an enterprise of a like character and with like aims.

88 6. No investment transaction authorized by the board shall be handled by any
89 company or firm in which a member of the board has a substantial interest, nor shall
90 any member of the board profit directly or indirectly from any such investment.

91 7. No trustee or employee of the savings program shall receive any gain or profit

92 from any funds or transaction of the savings program. Any trustee, employee or agent
93 of the savings program accepting any gratuity or compensation for the purpose of
94 influencing such trustee's, employee's or agent's action with respect to the investment
95 or management of the funds of the savings program shall thereby forfeit the office and
96 in addition thereto be subject to the penalties prescribed for bribery.

166.435. 1. **Notwithstanding any law to the contrary**, the assets of the
2 savings program held by the board and the assets of any similar [savings program]
3 **programs sponsored, held, or otherwise authorized by law by this state or any**
4 **other state or political subdivision thereof** and qualified pursuant to Section 529
5 of the Internal Revenue Code and any income therefrom shall be exempt from all
6 taxation by the state or any of its political subdivisions. Income earned or received from
7 the fund **or, prior to August 28, 2010, any similar program sponsored, held, or**
8 **otherwise authorized by law by this state or any other state or political**
9 **subdivision thereof and qualified pursuant to Section 529 of the Internal**
10 **Revenue Code**, by any participant or beneficiary shall not be subject to state income
11 tax **imposed pursuant to chapter 143, RSMo**, and shall be eligible for any benefits
12 provided in accordance with Section 529 of the Internal Revenue Code. The exemption
13 from taxation pursuant to this section shall apply only to assets and income maintained,
14 accrued, or expended pursuant to the requirements of the [savings program established
15 pursuant to sections 166.400 to 166.455, the provisions of this section] **programs**
16 **sponsored, held, or otherwise authorized by law of this state or any other**
17 **state or political subdivision thereof** and Section 529 of the Internal Revenue Code,
18 and no exemption shall apply to assets and income expended for any other
19 purposes. Annual contributions **made to the savings program held by the board**
20 **and, only for contributions made prior to August 28, 2010, by any similar**
21 **program sponsored, held, or otherwise authorized by law by this state or any**
22 **other state or political subdivision thereof qualified pursuant to Section 529**
23 **of the Internal Revenue Code**, up to and including eight thousand dollars [made to
24 the savings program] **for the participant taxpayer** shall be subtracted [from] **in**
25 **determining** Missouri adjusted gross income pursuant to section 143.121, RSMo. **The**
26 **deduction for contributions provided for in this subsection shall not apply**
27 **with respect to any contributions made to a program sponsored, held, or**
28 **otherwise authorized by any other state unless such program permits the**
29 **establishment of an account by means of an initial contribution of fifty dollars**
30 **or less, or such program permits automated periodic contributions.**

31 2. If any deductible contributions to or earnings from any savings account are

32 distributed and not used to pay qualified higher education expenses or are not held for
33 the minimum length of time established by the board, the amount so distributed shall
34 be added to the Missouri adjusted gross income of the participant, or, if the participant
35 is not living, the beneficiary.

36 3. The provisions of this section shall apply to tax years beginning on or after
37 January 1, 1999, and the provisions of this section with regard to sections
38 166.500 to 166.556 shall apply to tax years beginning on or after January 1,
39 2004.

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

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

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

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

6 (2) "Benefits", the payment of qualified higher education expenses on
7 behalf of a beneficiary from a deposit account during the beneficiary's
8 attendance at an eligible educational institution;

9 (3) "Board", the Missouri higher education savings program board
10 established in section 166.415;

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

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

15 (6) "Internal Revenue Code", the Internal Revenue Code of 1986, as
16 amended;

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

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

22 (9) "Participation agreement", an agreement between a participant and

23 the board pursuant to and conforming with the requirements of sections
24 166.500 to 166.556;

25 (10) "Qualified higher education expenses", the qualified costs of tuition
26 and fees and other expenses for attendance at an eligible educational
27 institution, as defined in Section 529(e)(3) of the Internal Revenue Code of
28 1986, as amended.

166.515. 1. There is hereby created the "Missouri Higher Education
2 Deposit Program". The program shall be administered by the Missouri higher
3 education savings program board.

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

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

11 (2) Promulgate reasonable rules and regulations and establish policies
12 and procedures to implement sections 166.500 to 166.556, to permit the deposit
13 program to qualify as a qualified state tuition program pursuant to Section
14 529 of the Internal Revenue Code and to ensure the deposit program's
15 compliance with all applicable laws;

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

22 (4) Enter into an agreement with any financial institution, entity, or
23 business clearinghouse for the operation of the deposit program pursuant to
24 sections 166.500 to 166.556; providing however, that such institution, entity,
25 or clearinghouse shall be a private for-profit or not-for-profit entity and not
26 a government agency. No more than one board member may have a direct
27 interest in such institution, entity, or clearinghouse. Such institution, entity,
28 or clearinghouse shall implement the board's policies and administer the
29 program for the board and with electing depository institutions and others;

30 (5) Enter into participation agreements with participants;

31 (6) Accept any grants, gifts, legislative appropriations, and other

32 moneys from the state, any unit of federal, state, or local government or any
33 other person, firm, partnership, or corporation for deposit to the account of
34 the deposit program;

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

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

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

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

46 (11) Effectuate and carry out all the powers granted by sections 166.500
47 to 166.556, and have all other powers necessary to carry out and effectuate
48 the purposes, objectives, and provisions of sections 166.500 to 166.556
49 pertaining to the deposit program;

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

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

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

63 3. The funds shall be invested only in those investments which a
64 prudent person acting in a like capacity and familiar with such matters would
65 use in the conduct of an enterprise of a like character and with like aims, as
66 provided in section 105.688, RSMo, as a means to hold funds until they are
67 placed in a Missouri depository institution as a deposit. The board may
68 delegate to duly appointed representatives of financial institutions authority

69 to act in place of the board in the investment and reinvestment of all or part
70 of the moneys and may also delegate to such representatives the authority to
71 act in place of the board in the holding, purchasing, selling, assigning,
72 transferring, or disposing of any or all of the investments in which such
73 moneys shall have been invested, as well as the proceeds of such investments
74 and such moneys, however, such investments shall be limited to certificates
75 of deposit and other deposits in federally insured depository
76 institutions. Such representatives shall be registered as "qualified student
77 deposit advisors on section 529 plans" with the board and such board shall,
78 by rule, develop and administer qualification tests from time to time to
79 provide representatives the opportunity to qualify for this program. In
80 exercising or delegating its investment powers and authority, members of the
81 board shall exercise ordinary business care and prudence under the facts and
82 circumstances prevailing at the time of the action or decision. No member of
83 the board shall be liable for any action taken or omitted with respect to the
84 exercise of, or delegation of, these powers and authority if such member shall
85 have discharged the duties of his or her position in good faith and with that
86 degree of diligence, care, and skill which a prudent person acting in a like
87 capacity and familiar with these matters would use in the conduct of an
88 enterprise of a like character and with like aims.

89 4. No board member or employee of the deposit program shall
90 personally receive any gain or profit from any funds or transaction of the
91 deposit program as a result of his or her membership of the board. Any board
92 member, employee, or agent of the deposit program accepting any gratuity or
93 compensation for the purpose of influencing such board member's,
94 employee's, or agent's action with respect to choice of intermediary, including
95 any financial institution, entity, or clearinghouse, for the funds of the deposit
96 program shall thereby forfeit the office and in addition thereto be subject to
97 the penalties prescribed for bribery. However, a board member who is
98 regularly employed directly or indirectly by a financial institution may state
99 that institution's interest and absent himself or herself from voting.

100 5. Depository institutions originating the deposit program shall be the
101 agent of the board and offer terms for certificates of deposit and other
102 deposits in such program as permitted by the board, subject to a uniform
103 interest rate disclosure as defined in federal regulations of the Board of
104 Governors of the Federal Reserve System, specifically Federal Reserve
105 Regulation DD, as amended from time to time. The board shall establish

106 various deposit opportunities based on amounts deposited and length of time
107 held that are uniformly available to all depository institutions that elect to
108 participate in the program, and the various categories of fixed or variable
109 rates shall be the only interest rates available under this program. A
110 depository institution that originates the deposit as agent for the board and
111 participates in the program shall receive back and continue to hold the
112 certificate of deposit or other deposit, provided such depository institution
113 continues to comply with requirements and regulations prescribed by the
114 board. Such deposit and certificate of deposit shall be titled in the name of
115 the clearing entity for the benefit of the participant, and shall be insured as
116 permitted by any agency of the federal government that insures deposits in
117 depository institutions. Any depository institution or intermediary that fails
118 to comply with these provisions shall forfeit its right to participate in this
119 program; provided however, the board shall be the sole and exclusive judge
120 of compliance except as otherwise provided by provisions in Section 529 of
121 the Internal Revenue Code and the Internal Revenue Service enforcement of
122 such section.

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

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

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

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

15 (4) A participation agreement shall disclose to participants the risk
16 associated with depositing moneys with the board, including information on
17 federal insured deposit availability and coverage and penalties for
18 withdrawal before the deposit has matured;

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

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

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

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

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

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

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

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

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

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

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

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

166.540. The assets of the deposit program shall at all times be
2 **preserved, invested, and expended only for the purposes set forth in this**
3 **section and in accordance with the participation agreements, and no property**
4 **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
2 **536.010, RSMo, that is promulgated pursuant to sections 166.500 to 166.556**
3 **shall become effective only if it has been promulgated pursuant to the**
4 **provisions of chapter 536, RSMo. All rulemaking authority delegated prior to**
5 **August 28, 2004, is of no force and effect and repealed; however, nothing in**
6 **this section shall be interpreted to repeal or affect the validity of any rule**
7 **filed or adopted prior to August 28, 2004, if it fully complied with the**
8 **provisions of chapter 536, RSMo. Sections 166.500 to 166.556 and chapter 536,**
9 **RSMo, are nonseverable and if any of the powers vested with the general**
10 **assembly pursuant to chapter 536, RSMo, to review, to delay the effective**
11 **date, or to disapprove and annul a rule are subsequently held**
12 **unconstitutional, then the grant of rulemaking authority and any rule**
13 **proposed or adopted after August 28, 2004, shall be invalid and void.**

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

166.555. Money accruing to and deposited in individual deposit
2 **accounts shall not be part of total state revenues as defined in sections 17 and**
3 **18, article X, Constitution of Missouri, and the expenditure of such revenues**
4 **shall not be an expense of state government under section 20, article X,**
5 **Constitution of Missouri.**

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

2 **166.557. Pursuant to section 23.253, RSMo, of the Missouri Sunset Act:**

3 **(1) The provisions of the new program authorized under sections**

4 **166.500 to 166.557 shall automatically sunset six years after the effective date**
5 **of sections 166.500 to 166.557 unless reauthorized by an act of the general**
6 **assembly; and**

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

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

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

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

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

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

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

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

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

9 2. Either fee provided for in subdivisions (1) and (2) of subsection 1 of this section
10 may be charged such debtor, and is not included as interest or service charges for the
11 purposes of state usury laws; except that the expeditor fee as provided in subdivision (2)
12 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
2 or indirectly charged, contracted for or received for interest, service charges or other fees
3 as an incident to any such extension of credit except as provided and regulated by

4 sections 367.100 to 367.200, RSMo, and except:

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

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

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

25 (4) If the contract so provides, a charge for late payment for a single payment
26 note in default for a period of not less than fifteen days in an amount not to exceed five
27 percent of the payment due; provided that, the late charge for a single payment note
28 shall not exceed fifty dollars;

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

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

37 (7) If the contract or promissory note, signed by the borrower, provides for
38 attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed
39 fifteen percent of the amount due and payable under such contract or promissory note,

40 together with any court costs assessed. The attorney fees shall only be applicable where
41 the contract or promissory note is referred for collection to an attorney, and is not
42 handled by a salaried employee of the holder of the contract;

43 (8) Provided the debtor agrees in writing, the lender may collect a fee in advance
44 for allowing the debtor to defer up to three monthly loan payments, so long as the fee is
45 no more than the lesser of fifty dollars or ten percent of the loan payments deferred, no
46 extensions are made until the first loan payment is collected and no more than one
47 deferral in a twelve-month period is agreed to and collected on any one loan; this
48 subdivision applies to nonprecomputed loans only and does not affect any other
49 subdivision;

50 (9) If the open-end credit contract is tied to a transaction account in a depository
51 institution, such account is in the institution's assets and such contract provides for
52 loans of thirty-one days or longer which are "open-end credit", as such term is defined
53 in the federal Consumer Credit Protection Act and regulations thereunder, the creditor
54 may charge a credit advance fee of the lesser of twenty-five dollars or five percent of the
55 credit advanced from time to time from the line of credit; such credit advance fee may
56 be added to the open-end credit outstanding along with any interest, and shall not be
57 considered the unlawful compounding of interest as that term is defined in section
58 408.120.

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

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

**408.178. Notwithstanding any other law to the contrary, on loans with
2 an original amount of six hundred dollars or more, and provided the debtor
3 agrees in writing, the lender may collect a fee in advance for allowing the
4 debtor to defer monthly loan payments, so long as the fee on each deferred
5 period is no more than the lesser of fifty dollars or ten percent of the loan
6 payments deferred, however, a minimum fee of twenty-five dollars is**

7 **permitted, and no extensions are made until the first loan payment is**
8 **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
2 which the rate or amount of interest **and fees** charged or received [is] **are** lawful **under**
3 **Missouri law** without regard to the rates permitted in section 408.100 **and the fees**
4 **permitted in sections 408.140, 408.145, and 408.178.**

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

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

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

13 4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of
14 interest **and fees** charged [is] **are** lawful **under Missouri law** without regard to the
15 rates permitted in subsection 1 of this section **and the fees permitted in section**
16 **408.233.**

408.480. The changes in sections 408.140, 408.145, 408.190, and 408.232
2 **are remedial and should be given that construction; however, this section**
3 **shall have no effect, favorably or unfavorably, on any case filed in court prior**
4 **to January 1, 2004.**

427.225. 1. Deceptive use of a financial institution's name in
2 **notification or solicitation occurs when a business, or a person acting on its**
3 **behalf, engages in the following activity:**

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

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

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

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

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

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

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

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

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

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

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

41 **4. For the purposes of this section, a financial institution includes a**
42 **commercial bank, savings and loan association, savings bank, credit union,**
43 **mortgage banker, or consumer finance company, or an institution chartered**
44 **pursuant to the provisions of an act of the United States known as the Farm**
45 **Credit Act of 1971.**

432.047. 1. For the purposes of this section, the term "credit agreement"
2 **means an agreement to lend or forbear repayment of money, to otherwise**

3 **extend credit, or to make any other financial accommodation.**

4 **2. A debtor may not maintain an action upon or a defense, regardless**
5 **of legal theory in which it is based, in any way related to a credit agreement**
6 **unless the credit agreement is in writing, provides for the payment of interest**
7 **or for other consideration, and sets forth the relevant terms and conditions.**

8 **3. (1) If a written credit agreement has been signed by a debtor,**
9 **subsection 2 of this section shall not apply to any credit agreement between**
10 **such debtor and creditor unless such written credit agreement contains the**
11 **following language in boldface ten point type: "Oral agreements or**
12 **commitments to loan money, extend credit or to forbear from enforcing**
13 **repayment of a debt including promises to extend or renew such debt are not**
14 **enforceable, regardless of the legal theory upon which it is based that is in**
15 **any way related to the credit agreement. To protect you (borrower(s)) and us**
16 **(creditor) from misunderstanding or disappointment, any agreements we**
17 **reach covering such matters are contained in this writing, which is the**
18 **complete and exclusive statement of the agreement between us, except as we**
19 **may later agree in writing to modify it."**

20 **(2) Notwithstanding any other law to the contrary in chapter 432, the**
21 **provisions of this section shall apply to commercial credit agreements only**
22 **and shall not apply to credit agreements for personal, family, or household**
23 **purposes.**

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

443.130. 1. If [any such person] **the secured party**, [thus] receiving
2 satisfaction **for the debt secured pursuant to this chapter**, does not, within [fifteen
3 business] **forty-five** days after request and tender of costs, [deliver to the person
4 making satisfaction] **submit for recording** a sufficient deed of release, such [person]
5 **secured party** shall [forfeit] **be liable** to the [party aggrieved] **mortgagor for the**
6 **lesser of an amount of three hundred dollars a day for each day, after the**
7 **forty-fifth day, that the secured party fails to submit for recording a sufficient**
8 **deed of release or ten percent [upon] of the amount of the security instrument,**
9 [absolutely, and any other damages such person may be able to prove such person has
10 sustained,] **plus court costs and attorney fees** to be recovered in any court of
11 competent jurisdiction. [A business day is any day except Saturday, Sunday and legal

12 holidays.] **In the event a document submitted for recording by a secured party**
13 **is rejected for recording for any reason, such secured party shall have sixty**
14 **days following receipt of notice that the document has been rejected in which**
15 **to submit a recordable and sufficient deed of release.**

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

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

506.290. 1. Any suit under the provisions of sections 506.200 to 506.320 shall
2 be filed in the county in which the cause of action accrues or in the county where the
3 plaintiff resides, and if there be other defendants in such action who are residents of the
4 state of Missouri, then such action shall be brought in any county in which any one of
5 said defendants resides, or in the county within which the plaintiff resides and the
6 defendant may be found.

7 2. **Any civil suit under the provisions of section 570.223, RSMo, for a**
8 **person charged with identity theft may be filed:**

9 (1) **In the county in which the offense is committed;**

10 (2) **If the offense is committed partly in one county and partly in**
11 **another, or if the elements of the offense occur in more than one county, then**
12 **in any of the counties where any element of the offense occurred;**

13 (3) **In the county in which the defendant resides;**

14 (4) **In the county in which the victim resides; or**

15 (5) **In the county in which the property obtained or attempted to be**
16 **obtained was located.**

541.033. 1. Persons accused of committing offenses against the laws of this state,
2 except as may be otherwise provided by law, shall be prosecuted:

3 (1) **In the county in which the offense is committed; or**

4 (2) **If the offense is committed partly in one county and partly in another, or if**

5 the elements of the crime occur in more than one county, then in any of the counties
6 where any element of the offense occurred.

7 **2. Persons accused of committing the offenses of identity theft against**
8 **the laws of this state in sections 570.223, 570.224, and 575.120, RSMo, shall be**
9 **prosecuted:**

10 **(1) In the county in which the offense is committed;**

11 **(2) If the offense is committed partly in one county and partly in**
12 **another, or if the elements of the offense occur in more than one county, then**
13 **in any of the counties where any element of the offense occurred;**

14 **(3) In the county in which the victim resides; or**

15 **(4) In the county in which the property obtained or attempted to be**
16 **obtained was located.**

570.223. 1. A person commits the crime of identity theft if he **or she** knowingly
2 and with the intent to deceive or defraud obtains, possesses, transfers, uses, or attempts
3 to obtain, transfer or use, one or more means of identification not lawfully issued for his
4 **or her** use.

5 2. [Identity theft is punishable by up to six months in jail for the first offense;
6 up to one year in jail for the second offense; and one to five years imprisonment for the
7 third or subsequent offense] **The term "means of identification" as used in this**
8 **section includes, but is not limited to, the following:**

9 **(1) Social Security numbers;**

10 **(2) Drivers license numbers;**

11 **(3) Checking account numbers;**

12 **(4) Savings account numbers;**

13 **(5) Credit card numbers;**

14 **(6) Debit card numbers;**

15 **(7) Personal identification (PIN) code;**

16 **(8) Electronic identification numbers;**

17 **(9) Digital signatures;**

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

20 **(11) Biometric data;**

21 **(12) Fingerprints;**

22 **(13) Passwords;**

23 **(14) Parent's legal surname prior to marriage;**

24 **(15) Passports; or**

25 **(16) Birth certificates.**

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

27 **(1) Identity theft or attempted identity theft which does not result in**
28 **the theft or appropriation of credit, money, goods, services, or other property**
29 **is a class B misdemeanor;**

30 **(2) Identity theft which results in the theft or appropriation of credit,**
31 **money, goods, services, or other property not exceeding five hundred dollars**
32 **in value is a class A misdemeanor;**

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

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

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

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

45 **(1) In clearing the credit history or credit rating of the victim; and**

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

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

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

61 **7. Civil actions under this section must be brought within five years**
62 **from the date on which the identity of the wrongdoer was discovered or**

63 reasonably should have been discovered.

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

68 9. Sections 570.223 and 570.224 shall not apply to the following
69 activities:

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

73 (2) A person obtains means of identification or information in the
74 course of a bona fide consumer or commercial transaction;

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

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

80 (5) A person is otherwise authorized by law to engage in the conduct
81 that is the subject of the prosecution.

82 10. Notwithstanding the provisions of subdivisions (1) or (2) of
83 subsection 3 of this section, every person who has previously pled guilty to
84 or been found guilty of identity theft or attempted identity theft, and who
85 subsequently pleads guilty to or is found guilty of identity theft or attempted
86 identity theft of credit, money, goods, services, or other property not
87 exceeding five hundred dollars in value is guilty of a class D felony and shall
88 be punished accordingly.

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

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

570.224. 1. A person commits the crime of trafficking in stolen

2 identities when such person manufactures, sells, transfers, purchases, or
3 possesses, with intent to sell or transfer means of identification as defined in
4 subsection 2 of section 570.223, for the purpose of committing identity theft.

5 2. Possession of five or more means of identification of the same person
6 or possession of means of identification of five or more separate persons shall
7 be evidence that the identities are possessed with intent to manufacture, sell,
8 or transfer means of identification for the purpose of committing identity
9 theft. In determining possession of five or more means of identification of the
10 same person, or possession of means of identification of five or more separate
11 persons for the purposes of evidence pursuant to this subsection, the
12 following do not apply:

13 (1) The possession of his or her own identification documents;

14 (2) The possession of the identification documents of a person who has
15 consented to the person at issue possessing his or her identification
16 documents.

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

Section 1. 1. "Public entity", as used in this section, shall mean the
2 board of fund commissioners of the state and the state board of public
3 buildings.

4 2. Any public entity as defined in subsection 1 of this section may:

5 (1) Execute and perform any obligations under any instruments,
6 contracts, or agreements convenient or necessary to incur obligations with
7 interest calculated at a fixed or variable rate; and

8 (2) Obtain without any requirement for bidding, but with compliance
9 with the public entity's policies, credit enhancement or other financing
10 arrangements and execute and perform any obligations under any related
11 contracts and agreements convenient or necessary to facilitate such
12 enhancement or financing arrangements including but not limited to
13 arrangements such as municipal bond insurance; surety bonds; liquidity
14 facilities; forward agreements; tender agreements; remarketing agreements;
15 option agreements; interest rate swap, exchange, cap, lock or floor
16 agreements; letters of credit; and purchase agreements.

17 3. All financial arrangements entered into under the provisions of this
18 section shall be fully enforceable as valid and binding contracts as and to the
19 extent provided herein and by other applicable law.

20 4. Nothing in this section shall be applied or interpreted to diminish
21 the power any public entity may otherwise have under any other provisions

22 **of law.**

2 [570.223. 1. A person commits the crime of identity theft if he **or**
3 **she** knowingly and with the intent to deceive or defraud obtains,
4 possesses, transfers, uses, or attempts to obtain, transfer or use, one or
5 more means of identification not lawfully issued for his **or her** use.

6 2. [Identity theft is punishable by up to six months in jail for the
7 first offense; up to one year in jail for the second offense; and one to five
8 years imprisonment for the third or subsequent offense.] **The term**
9 **"means of identification" as used in this section includes, but is**
10 **not limited to, the following:**

- 11 (1) **Social Security numbers;**
- 12 (2) **Drivers license numbers;**
- 13 (3) **Checking account numbers;**
- 14 (4) **Savings account numbers;**
- 15 (5) **Credit card numbers;**
- 16 (6) **Debit card numbers;**
- 17 (7) **Personal identification (PIN) code;**
- 18 (8) **Electronic identification numbers;**
- 19 (9) **Digital signatures;**
- 20 (10) **Any other numbers or information that can be used to**
21 **access a person's financial resources;**
- 22 (11) **Biometric data;**
- 23 (12) **Fingerprints;**
- 24 (13) **Passwords;**
- 25 (14) **Parent's legal surname prior to marriage;**
- 26 (15) **Passports; or**
- 27 (16) **Birth certificates.**

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

30 (1) **Identity theft or attempted identity theft which does**
31 **not result in the theft or appropriation of credit, money, goods,**
32 **services, or other property is a class B misdemeanor;**

33 (2) **Identity theft which results in the theft or**
34 **appropriation of credit, money, goods, services, or other property**
35 **not exceeding five hundred dollars in value is a class A**
36 **misdemeanor;**

(3) **Identity theft which results in the theft or**

37 **appropriation of credit, money, goods, services, or other property**
38 **exceeding five hundred dollars and not exceeding one thousand**
39 **dollars in value is a class D felony;**

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

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

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

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

56 (1) In clearing the credit history or credit rating of the victim; and

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

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

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

74 damages pursuant to subsection 5 of this section.

75 7. Any person charged with identity theft shall be
76 prosecuted:

77 (1) In the county in which the offense is committed; or

78 (2) If the offense is committed partly in one county and
79 partly in another, or if the elements of the offense occur in more
80 than one county, then in any of the counties where any element
81 of the offense occurred; or

82 (3) In the county in which the defendant resides; or

83 (4) In the county in which the victim resides; or

84 (5) In the county in which the property obtained or
85 attempted to be obtained was located.

86 Civil actions under this section must be brought within five years
87 from the date on which the identity of the wrongdoer was
88 discovered or reasonably should have been discovered.

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

94 9. Sections 570.223 and 570.224 shall not apply to the
95 following activities:

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

100 (2) A person obtains means of identification or information
101 in the course of a bona fide consumer or commercial transaction;

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

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

108 10. Notwithstanding the provisions of subdivisions (1) or
109 (2) of subsection 3 of this section, every person who has
110 previously pled guilty to or been found guilty of identity theft or

111 attempted identity theft, and who subsequently pleads
112 guilty to or is found guilty of identity theft or attempted
113 identity theft of credit, money, goods, services, or other
114 property not exceeding five hundred dollars in value is
115 guilty of a class D felony and shall be punished
116 accordingly.

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

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

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

136 14. A person who commits the crime of identity theft
137 for the purpose of committing a terrorist act as defined by
138 existing federal law, or for the purpose of aiding or
139 abetting another in committing a terrorist act shall be
140 guilty of a Class A felony.

141 15. A person who commits the crime of identity theft
142 for the purpose of voting, obtaining another person's
143 voting privileges, or altering the results of an election or
144 aiding or abetting another in obtaining another person's
145 voting privileges or altering the result of an election shall
146 be guilty of a Class C felony.]

[570.224. 1. A person commits the crime of

2 trafficking in stolen identities when such person
3 manufactures, sells, transfers, purchases, or possesses,
4 with intent to sell or transfer means of identification or
5 identifying information, for the purpose of committing
6 identity theft. In determining possession of five or more
7 identification documents of the same person, or possession
8 of identifying information of five or more separate persons
9 for the purposes of evidence pursuant to this subsection,
10 the following do not apply:

11 (1) The possession of his or her own identification
12 documents;

13 (2) The possession of the identification documents
14 of a person who has consented to the person at issue
15 possessing his or her identification documents.

16 2. Unauthorized possession of means of
17 identification of five or more separate persons, shall be
18 evidence that the identities are possessed with intent to
19 manufacture, sell, or transfer means of identification or
20 identifying information for the purpose of committing
21 identity theft.

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

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