

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 1038**  
**92ND GENERAL ASSEMBLY**

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Reported from the Committee on Financial Services, April 22, 2004, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bill No. 1038 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

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**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.

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*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second regular session of the ninety-second general assembly in senate committee substitute for house bill no. 916, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 33.103, 166.415, 166.435, 166.500, 166.505, 166.510, 166.515, 166.520, 166.525,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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) Promulgate reasonable rules and regulations and establish policies and procedures

23 to implement sections 166.400 to 166.455, to permit the savings program to qualify as a  
24 "qualified state tuition program" pursuant to Section 529 of the Internal Revenue Code and to  
25 ensure the savings program's compliance with all applicable laws;

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

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

34 (5) Enter into participation agreements with participants;

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

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

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

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

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

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

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

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

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

59 majority of the members present.

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

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

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

86 7. No trustee or employee of the savings program shall receive any gain or profit from  
87 any funds or transaction of the savings program. Any trustee, employee or agent of the savings  
88 program accepting any gratuity or compensation for the purpose of influencing such trustee's,  
89 employee's or agent's action with respect to the investment or management of the funds of the  
90 savings program shall thereby forfeit the office and in addition thereto be subject to the penalties  
91 prescribed for bribery.

166.435. 1. **Notwithstanding any law to the contrary**, the assets of the savings  
2 program held by the board and the assets of any similar [savings program] **programs sponsored,**  
3 **held, or otherwise authorized by law by this state or any other state or political subdivision**

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

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

32 3. The provisions of this section shall apply to tax years beginning on or after January  
33 1, 1999, **and the provisions of this section with regard to sections 166.500 to 166.556 shall**  
34 **apply to tax years beginning on or after January 1, 2004.**

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

**166.505. Notwithstanding the provisions of sections 166.400 to 166.456 to the**  
2 **contrary, the higher education deposit program is established as a nonexclusive alternative**  
3 **to the Missouri higher education savings program, and any participant may elect to**

4 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  
2 requires another interpretation, the following terms mean:

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

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

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

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

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

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

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

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

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

23 (10) "Qualified higher education expenses", the qualified costs of tuition and fees  
24 and other expenses for attendance at an eligible educational institution, as defined in  
25 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  
2 Program". The program shall be administered by the Missouri higher education savings  
3 program board.

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

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

10 (2) Promulgate reasonable rules and regulations and establish policies and

11 procedures to implement sections 166.500 to 166.556, to permit the deposit program to  
12 qualify as a qualified state tuition program pursuant to Section 529 of the Internal  
13 Revenue Code and to ensure the deposit program's compliance with all applicable laws;

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

19 (4) Enter into an agreement with any financial institution, entity, or business  
20 clearinghouse for the operation of the deposit program pursuant to sections 166.500 to  
21 166.556; providing however, that such institution, entity, or clearinghouse shall be a  
22 private for-profit or not-for-profit entity and not a government agency. No more than one  
23 board member may have a direct interest in such institution, entity, or clearinghouse. Such  
24 institution, entity, or clearinghouse shall implement the board's policies and administer the  
25 program for the board and with electing depository institutions and others;

26 (5) Enter into participation agreements with participants;

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

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

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

35 (9) Make refunds to participants upon the termination of participation agreements  
36 pursuant to the provisions, limitations, and restrictions set forth in sections 166.500 to  
37 166.556 and the rules adopted by the board;

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

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

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

46 (13) To both adopt and implement various methods of transferring money by



47 **electronic means to efficiently transfer funds to depository institutions for deposit, and in**  
48 **addition or in the alternative, to allow funds to be transferred by agent agreements,**  
49 **assignment, or otherwise, provided such transfer occurs within two business days;**

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

55 **3. The funds shall be invested only in those investments which a prudent person**  
56 **acting in a like capacity and familiar with such matters would use in the conduct of an**  
57 **enterprise of a like character and with like aims, as provided in section 105.688, RSMo, as**  
58 **a means to hold funds until they are placed in a Missouri depository institution as a**  
59 **deposit. The board may delegate to duly appointed representatives of financial institutions**  
60 **authority to act in place of the board in the investment and reinvestment of all or part of**  
61 **the moneys and may also delegate to such representatives the authority to act in place of**  
62 **the board in the holding, purchasing, selling, assigning, transferring, or disposing of any**  
63 **or all of the investments in which such moneys shall have been invested, as well as the**  
64 **proceeds of such investments and such moneys, however, such investments shall be limited**  
65 **to certificates of deposit and other deposits in federally insured depository institutions.**  
66 **Such representatives shall be registered as "qualified student deposit advisors on section**  
67 **529 plans" with the board and such board shall, by rule, develop and administer**  
68 **qualification tests from time to time to provide representatives the opportunity to qualify**  
69 **for this program. In exercising or delegating its investment powers and authority,**  
70 **members of the board shall exercise ordinary business care and prudence under the facts**  
71 **and circumstances prevailing at the time of the action or decision. No member of the board**  
72 **shall be liable for any action taken or omitted with respect to the exercise of, or delegation**  
73 **of, these powers and authority if such member shall have discharged the duties of his or**  
74 **her position in good faith and with that degree of diligence, care, and skill which a prudent**  
75 **person acting in a like capacity and familiar with these matters would use in the conduct**  
76 **of an enterprise of a like character and with like aims.**

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

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

87       **5. Depository institutions originating the deposit program shall be the agent of the**  
88 **board and offer terms for certificates of deposit and other deposits in such program as**  
89 **permitted by the board, subject to a uniform interest rate disclosure as defined in federal**  
90 **regulations of the Board of Governors of the Federal Reserve System, specifically Federal**  
91 **Reserve Regulation DD, as amended from time to time. The board shall establish various**  
92 **deposit opportunities based on amounts deposited and length of time held that are**  
93 **uniformly available to all depository institutions that elect to participate in the program,**  
94 **and the various categories of fixed or variable rates shall be the only interest rates available**  
95 **under this program. A depository institution that originates the deposit as agent for the**  
96 **board and participates in the program shall receive back and continue to hold the**  
97 **certificate of deposit or other deposit, provided such depository institution continues to**  
98 **comply with requirements and regulations prescribed by the board. Such deposit and**  
99 **certificate of deposit shall be titled in the name of the clearing entity for the benefit of the**  
100 **participant, and shall be insured as permitted by any agency of the federal government**  
101 **that insures deposits in depository institutions. Any depository institution or intermediary**  
102 **that fails to comply with these provisions shall forfeit its right to participate in this**  
103 **program; provided however, the board shall be the sole and exclusive judge of compliance**  
104 **except as otherwise provided by provisions in Section 529 of the Internal Revenue Code**  
105 **and the Internal Revenue Service enforcement of such section.**

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

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

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

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

13       **(4) A participation agreement shall disclose to participants the risk associated with**

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

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

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

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

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

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

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

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

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

8 (4) A rollover distribution, as defined in Section 529(c)(3)(C)(i) of the Internal

9 Revenue Code; or

10 (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,  
2 and expended only for the purposes set forth in this section and in accordance with the  
3 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,  
2 RSMo, that is promulgated pursuant to sections 166.500 to 166.556 shall become effective  
3 only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. All  
4 rulemaking authority delegated prior to August 28, 2004, is of no force and effect and  
5 repealed; however, nothing in this section shall be interpreted to repeal or affect the  
6 validity of any rule filed or adopted prior to August 28, 2004, if it fully complied with the  
7 provisions of chapter 536, RSMo. Sections 166.500 to 166.556 and chapter 536, RSMo, are  
8 nonseverable and if any of the powers vested with the general assembly pursuant to  
9 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule  
10 are subsequently held unconstitutional, then the grant of rulemaking authority and any  
11 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  
2 financial status and investment policy of the program as well as the participation rate in  
3 the program. The auditor shall also review the continued viability of the program and the  
4 administration of the program by the board. The auditor shall report the findings  
5 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  
2 be part of total state revenues as defined in sections 17 and 18, article X, Constitution of  
3 Missouri, and the expenditure of such revenues shall not be an expense of state government  
4 under section 20, article X, Constitution of Missouri.

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

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

2 (1) The provisions of the new program authorized under sections 166.500 to  
3 166.557 shall automatically sunset six years after the effective date of sections 166.500 to  
4 166.557 unless reauthorized by an act of the general assembly; and

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

7 reauthorization of sections 166.500 to 166.557; and

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

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

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

408.032. 1. Notwithstanding any provisions of law to the contrary, the recording fees,  
2 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, RSMo;

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

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

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

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

408.140. 1. No further or other charge or amount whatsoever shall be directly or  
2 indirectly charged, contracted for or received for interest, service charges or other fees as an  
3 incident to any such extension of credit except as provided and regulated by sections 367.100 to  
4 367.200, RSMo, and except:

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

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

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

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

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

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

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

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

46           (9) If the open-end credit contract is tied to a transaction account in a depository

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

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

60         3. Notwithstanding any other provision of law to the contrary, in addition to charges  
61 allowed pursuant to section 408.100, an open-end credit contract provided by a company,  
62 financial institution, savings and loan or other credit issuing company which is regulated  
63 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  
2 amount of six hundred dollars or more, and provided the debtor agrees in writing, the  
3 lender may collect a fee in advance for allowing the debtor to defer monthly loan payments,  
4 so long as the fee on each deferred period is no more than the lesser of fifty dollars or ten  
5 percent of the loan payments deferred, however, a minimum fee of twenty-five dollars is  
6 permitted, and no extensions are made until the first loan payment is collected on any one  
7 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  
2 the rate or amount of interest **and fees** charged or received [is] **are** lawful **under Missouri law**  
3 without regard to the rates permitted in section 408.100 **and the fees permitted in sections**  
4 **408.140, 408.145, and 408.178.**

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

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

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

12           4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of interest  
13 **and fees** charged [is] **are** lawful **under Missouri law** without regard to the rates permitted in  
14 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**  
2 **remedial and should be given that construction; however, this section shall have no effect,**  
3 **favorably or unfavorably, on any case filed in court prior to January 1, 2004.**

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

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

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

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

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

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

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

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

27           **2. Deceptive use of another's name in notification or solicitation occurs when a**



28 **business, or a person acting on its behalf, engages in the following activity:**

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

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

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

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

**432.047. 1. For the purposes of this section, the term "credit agreement" means an**  
2 **agreement to lend or forbear repayment of money, to otherwise extend credit, or to make**  
3 **any other financial accommodation.**

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

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

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

21 **4. Nothing contained in this section shall affect the enforceability by a creditor of**  
22 **any promissory note, guaranty, security agreement, deed of trust, mortgage, or other**

23 **instrument, agreement, or document evidencing or creating an obligation for the payment**  
24 **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**  
2 **debt secured pursuant to this chapter**, does not, within [fifteen business] **forty-five** days after  
3 request and tender of costs, [deliver to the person making satisfaction] **submit for recording** a  
4 sufficient deed of release, such [person] **secured party** shall [forfeit] **be liable** to the [party  
5 aggrieved] **mortgagor for the lesser of an amount of three hundred dollars a day for each**  
6 **day, after the forty-fifth day, that the secured party fails to submit for recording a**  
7 **sufficient deed of release or** ten percent [upon] **of** the amount of the security instrument,  
8 [absolutely, and any other damages such person may be able to prove such person has sustained,]  
9 **plus court costs and attorney fees** to be recovered in any court of competent jurisdiction. [A  
10 business day is any day except Saturday, Sunday and legal holidays.] **In the event a document**  
11 **submitted for recording by a secured party is rejected for recording for any reason, such**  
12 **secured party shall have sixty days following receipt of notice that the document has been**  
13 **rejected in which to submit a recordable and sufficient deed of release.**

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

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

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

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

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

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

- 12       **(3) In the county in which the defendant resides;**  
13       **(4) In the county in which the victim resides; or**  
14       **(5) In the county in which the property obtained or attempted to be obtained was**  
15 **located.**

541.033. 1. Persons accused of committing offenses against the laws of this state, except  
2 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 the  
5 elements of the crime occur in more than one county, then in any of the counties where any  
6 element of the offense occurred.

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

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 another, or if the**  
11 **elements of the offense occur in more than one county, then in any of the counties where**  
12 **any element of the offense occurred;**

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

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

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

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

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

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

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

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

12       **(5) Credit card numbers;**

13       **(6) Debit card numbers;**

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

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

16       **(9) Digital signatures;**

17       **(10) Any other numbers or information that can be used to access a person's**

18 **financial resources;**

19 **(11) Biometric data;**

20 **(12) Fingerprints;**

21 **(13) Passwords;**

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

23 **(15) Passports; or**

24 **(16) Birth certificates.**

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

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

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

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

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

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

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

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

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

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

54 **award reasonable attorneys' fees to the plaintiff.**

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

58 **7. Civil actions under this section must be brought within five years from the date**  
59 **on which the identity of the wrongdoer was discovered or reasonably should have been**  
60 **discovered.**

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

65 **9. Sections 570.223 and 570.224 shall not apply to the following activities:**

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

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

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

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

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

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

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

87 **12. If credit, property, or services are obtained by two or more acts from the same**  
88 **person or location, or from different persons by two or more acts which occur in**  
89 **approximately the same location or time period so that the identity thefts are attributable**

90 to a single scheme, plan, or conspiracy, the acts may be considered as a single identity theft  
91 and the value may be the total value of all credit, property, and services involved.

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

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

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

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

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

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

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

4 (1) Execute and perform any obligations under any instruments, contracts, or  
5 agreements convenient or necessary to incur obligations with interest calculated at a fixed  
6 or variable rate provided that no more than twenty percent of the debt of the public entity  
7 to be outstanding on the day after the issuance of any variable rate debt shall be variable  
8 rate debt; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

74  
75 **Civil actions under this section must be brought within five years from the date**  
76 **on which the identity of the wrongdoer was discovered or reasonably should**  
77 **have been discovered.**

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

82                   9. Sections 570.223 and 570.224 shall not apply to the following  
83 activities:

84                   (1) A person obtains the identity of another person to misrepresent his



85 or her age for the sole purpose of obtaining alcoholic beverages, tobacco, going  
86 to a gaming establishment, or another privilege denied to minors;

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

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

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

94 10. Notwithstanding the provisions of subdivisions (1) or (2) of  
95 subsection 3 of this section, every person who has previously pled guilty to or  
96 been found guilty of identity theft or attempted identity theft, and who  
97 subsequently pleads guilty to or is found guilty of identity theft or attempted  
98 identity theft of credit, money, goods, services, or other property not exceeding  
99 five hundred dollars in value is guilty of a class D felony and shall be punished  
100 accordingly.

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

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

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

116 14. A person who commits the crime of identity theft for the purpose of  
117 committing a terrorist act as defined by existing federal law, or for the purpose  
118 of aiding or abetting another in committing a terrorist act shall be guilty of a  
119 Class A felony.

120 15. A person who commits the crime of identity theft for the purpose of  
121 voting, obtaining another person's voting privileges, or altering the results of an  
122 election or aiding or abetting another in obtaining another person's voting  
123 privileges or altering the result of an election shall be guilty of a Class C felony.]

2 [570.224. 1. A person commits the crime of trafficking in stolen  
3 identities when such person manufactures, sells, transfers, purchases, or  
possesses, with intent to sell or transfer means of identification or identifying

4           **information, for the purpose of committing identity theft. In determining**  
5           **possession of five or more identification documents of the same person, or**  
6           **possession of identifying information of five or more separate persons for the**  
7           **purposes of evidence pursuant to this subsection, the following do not apply:**

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

9                   **(2) The possession of the identification documents of a person who has**  
10           **consented to the person at issue possessing his or her identification documents.**

11           **2. Unauthorized possession of means of identification of five or more**  
12           **separate persons, shall be evidence that the identities are possessed with intent**  
13           **to manufacture, sell, or transfer means of identification or identifying**  
14           **information for the purpose of committing identity theft.**

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