HCS HB 959 -- FINANCIAL SERVICES

SPONSOR: Luetkemeyer

COMMITTEE ACTION: Voted "do pass" by the Committee on Financial Services by a vote of 17 to 2.

This substitute makes changes to the laws regarding financial services.

The substitute expands the College Tuition Savings Plan (also known as a “529 Plan”) by allowing Missouri residents to use any qualified 529 Plan from any state or political subdivision. Currently, Missouri residents can use only the state-sponsored plan, known as the Missouri Higher Education Savings Program. The substitute also establishes an additional savings plan, to be known as the Missouri Higher Education Deposit Program, which allows any bank in Missouri to establish savings accounts as part of a 529 Plan. State employees may request automatic payroll deductions for deposit into these accounts. The substitute requires the deposit program to be administered in the same fashion as the current savings program. The provisions governing this program will expire six years from the effective date of the substitute.

The substitute creates a cause of action for the deceptive use of the name of another financial institution. Any financial institution may sue any person or entity that creates a misleading advertisement or solicitation by including the name of the financial institution without consent. A plaintiff prevailing in this type of action will be entitled to $10,000 in statutory damages, plus any proven actual damages; attorney fees; and court costs.

The substitute makes several changes to the law governing how and when a lender must provide a deed of release when a borrower has paid off a mortgage. Current law requires the lender to issue a release to the borrower within 15 business days. The substitute lengthens this time frame to 45 days. The substitute also allows the lender to have the document recorded, rather than sending it to the borrower. If the document cannot be recorded for any reason, the lender will have an additional 60 days to file a document that can be recorded. Finally, the substitute limits the damages that may be awarded for noncompliance to $300 per day; $10,000 in the aggregate; or 10% of the amount of the loan, whichever is less.

The substitute makes changes to the laws regarding small loans. The substitute:

(1) Increases from $6 to $15 the maximum amount which may be charged as an expediter fee. The expediter fee is money collected by a third party to expedite the retrieval of a debtor's motor vehicle title from the Department of Revenue;

(2) Repeals a provision allowing a $10 charge as a late payment fee; and

(3) Allows lenders to collect a fee in advance for allowing the debtor to defer monthly loan payments on loans of $600 or more. The fee may be between $25 to $50, but not more than 10% of the loan payments deferred. This provision does not apply to pre-computed loans.

Finally, the substitute makes changes regarding the crime of identity theft. The substitute:

(1) Makes it a class A misdemeanor when the identity theft results in the theft or appropriation of credit, money, goods, services, or other property valued at less than $500. Current law sets a penalty of six months in jail for a first offense and does not refer to the value of the stolen property;

(2) Makes attempted identity theft a class B misdemeanor;

(3) Makes identity theft a class D felony when the value of the stolen property is more than $500 but does not exceed $1,000;

(4) Makes identity theft a class C felony when the value of the stolen property is more than $1,000 but does not exceed $10,000;

(5) Makes identity theft a class B felony when the value of the stolen property is more than $10,000 but does not exceed $100,000;

(6) Makes identity theft a class A felony when the value of the stolen property exceeds $100,000;

(7) Makes identity theft a class A felony when the identity theft is performed for the purpose of committing a terrorist act;

(8) Makes identity theft a class C felony when the identity theft is performed for the purpose of committing an election offense;

(9) Makes the identity thief liable to the victim for civil damages of up to $5,000 per incident or three times the amount of actual damages, whichever is greater;

(10) Allows the victim to seek a court order restraining the

identity thief from future acts that would constitute identity theft. In these actions, the court may award reasonable attorney fees to the plaintiff;

(11) Clarifies that the estate of a deceased person may pursue civil remedies when the estate is a victim of identity theft;

(12) Sets venue requirements for civil suits regarding identity theft, sets a limitation on civil suits at five years, and clarifies that a criminal conviction is not a prerequisite for a civil claim;

(13) Clarifies that identity theft does not include a minor’s misrepresentation of age by using an adult person’s identification;

(14) Makes a second offense a class D felony when the value of the property is less than $500;

(15) Creates the crime of trafficking in stolen identities, a class B felony; and

(16) Expands the crime of false impersonation to include the providing of a false identity to a law enforcement officer upon arrest. If the false identity is not discovered until after the person is convicted, the prosecutor must file a motion to correct the arrest records and court records. The substitute also allows the court to order the expungement of the false arrest records for the person whose identity was used.

FISCAL NOTE: Estimated Net Cost to General Revenue Fund of $57,738 to Unknown in FY 2005, $54,785 to Unknown in FY 2006, and $56,154 to Unknown in FY 2007. No impact on Other State Funds in FY 2005, FY 2006, and FY 2007.

PROPONENTS: Supporters say that the bill allows state employees to have a payroll deduction for a tax deductible college savings plan, making it easier for people to save.

Testifying for the bill were Representative Luetkemeyer; Missouri Bankers Association; Missouri Financial Services Association; Mortgage Bankers Association of Missouri; Farm Credit Services of Missouri; College Savings Foundation; Security Industry Association; St. Louis Region Commerce and Growth Association; Missouri Independent Bankers Association; Missouri Chamber of Commerce and Industry; State Farm Insurance; and Progressive Farm Credit Services.

OPPONENTS: Those who oppose the bill say that the bill would essentially end the MO$T Program, because the vendor would be unable to compete with these out-of-state funds that are outside of the state's regulatory authority. State law limits the fees that the Teachers Insurance Annuity Association - College Retirement Equities Fund (TIAA-CREF) can charge to .65 basis points (while the national average is much higher.) The MO$T Program is one of the best "529 Plans" in the nation, according to the financial industry publisher Morningstar. No other state has opened up their state income tax deduction allowance like this bill proposes. Claims that the MO$T Program is not properly marketed are unsubstantiated. There are more than 200 registered brokers currently established to market the TIAA-CREF MO$T Program, and every parent of a newborn child in Missouri receives a postcard explaining the MO$T Program and the importance of saving for college.

Testifying against the bill were Office of the State Treasurer; MO$T fund manager, TIAA-CREF; and Missouri National Education Association.

Richard Smreker, Senior Legislative Analyst