

CCS#2 SCS HCS HB 959 -- BANKING

This bill changes the laws regarding financial services, including college savings programs; deceptive use of a financial institution's name; identity theft; restrictions on small loans; procedures for releasing a deed of trust; use of variable rate debt instruments by state bonding entities; and exemptions from attachment and execution.

COLLEGE SAVINGS PROGRAMS

The College Tuition Savings Plan (also known as a "529 Plan") is expanded by establishing an additional savings plan, to be known as the Missouri Higher Education Deposit Program. The deposit program 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. Annual contributions made to savings programs up to \$8,000 will be subtracted from the participant's gross income, and any income earned by the investment will not be subject to state income tax. The deposit program must be administered in the same fashion as the current savings program. These provisions will expire six years from the effective date.

DECEPTIVE USE OF A FINANCIAL INSTITUTION'S NAME

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

IDENTITY THEFT

The bill changes the laws regarding the crime of identity theft. The bill:

- (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. Venue in this type of civil suit is proper in any county where any of the property stolen was located, where the defendant or victim resides, or in any county in which an element of a criminal charge of identity theft was committed;
- (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) Establishes 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) Clarifies that a criminal prosecution for identity theft may be conducted in any county where a victim or defendant resides, where the stolen property was located, or in any county where an element of the crime was committed;
- (15) Makes a second offense of identity theft or attempted identity theft a class D felony when the value of the property is less than \$500; and

(16) Creates the crime of trafficking in stolen identities, a class B felony, and is committed when a person possesses or transfers any means of identification for the purpose of committing identity theft. Unauthorized possession of a means of identification for five persons will be evidence of the intent.

DEEDS OF RELEASE

Several changes are made to the laws regarding a deed of release on a mortgage. Current law requires the lender to issue a release to the borrower within 15 business days after a mortgage has been paid off. The bill lengthens this time frame to 45 calendar days and allows the lender to have the document recorded, rather than sent 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. The bill limits the damages that may be awarded for noncompliance to \$300 per day or 10% of the amount of the loan, whichever is less.

SMALL LOANS

The bill changes the laws regarding small loans and 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. The bill repeals a provision allowing a \$10 charge as a late payment fee and allows lenders to collect a fee in advance for allowing the debtor to defer monthly loan payments of \$600 or more. The fee may be between \$25 to \$50, but not more than 10% of the payments deferred. This provision does not apply to pre-computed loans.

STATE BONDING ENTITIES

The Board of Fund Commissioners and the State Board of Public Buildings are authorized to issue and refinance existing financial instruments, converting them into variable rate issuances and other financial arrangements. Up to 20% of the state's outstanding debt may be variable rate debt.

ATTACHMENT AND EXECUTION EXEMPTIONS

The bill increases the exemption from attachment and execution for certain belongings including household goods, from \$1,000 to \$3,000; value of any other property of any kind from \$400 to \$600; wedding rings up to \$1,500; tools of a trade, from \$2,000 to \$3,000; motor vehicles in the aggregate, from \$1,000 to \$3,000; mobile homes not attached to real estate in which the debtor has a fee interest, from \$1,000 to \$5,000; alimony, from \$500 to \$750 a month; and the exemption for being the head of a

household, from \$850 plus \$250 for each dependent to \$1,250 plus \$350 for each dependent, including dependents who are determined to be disabled.