

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1935
96TH GENERAL ASSEMBLY

6149L.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 32.069, 34.055, 34.057, 160.281, 160.283, 161.421, 161.424, 287.160, 287.745, 335.233, 408.020, 408.040, 409.5-509, 409.6-604, 414.356, 414.570, 444.870, 447.539, 630.460, and 643.079, RSMo, and to enact in lieu thereof twenty new sections relating to interest rates, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 32.069, 34.055, 34.057, 160.281, 160.283, 161.421, 161.424, 287.160, 287.745, 335.233, 408.020, 408.040, 409.5-509, 409.6-604, 414.356, 414.570, 444.870, 447.539, 630.460, and 643.079, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 32.069, 34.055, 34.057, 160.281, 160.283, 161.421, 161.424, 287.160, 287.745, 335.233, 408.020, 408.040, 409.5-509, 409.6-604, 414.356, 414.570, 444.870, 447.539, 630.460, and 643.079, to read as follows:

32.069. Notwithstanding any other provision of law to the contrary, interest shall be allowed and paid on any refund or overpayment at the rate determined by section [32.068] **32.065** only if the overpayment is not refunded within one hundred twenty days, or within ninety days in the case of taxes imposed by sections 143.011 and 143.041, from the latest of the following dates:

- (1) The last day prescribed for filing a tax return or refund claim, without regard to any extension of time granted;
- (2) The date the return, payment, or claim is filed; or
- (3) The date the taxpayer files for a credit or refund and provides accurate and complete documentation to support such claim.

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

34.055. 1. Except as otherwise provided in section 34.057, all invoices for supplies and services purchased by the state, duly approved and processed, shall be subject to interest charges or late payment charges as provided in this section.

2. After the forty-fifth day following the later of the date of delivery of the supplies and services or the date upon which the invoice is duly approved and processed, interest retroactive to the thirtieth day shall be paid on any unpaid balance, except balances for services provided by a gas corporation, electrical corporation, water corporation, or sewer corporation which has received authorization from the public service commission to impose late payment charges on delinquent utility bills, upon application of the vendor thereof. The rate of such interest shall be [three] **one** percentage [points] **point** above the [average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System] **rate set by section 32.065**.

3. The state shall be liable for late payment charges on any delinquent bill for services purchased by the state from a gas corporation, electrical corporation, water corporation, or sewer corporation which has received authorization from the public service commission to impose late payment charges on delinquent utility bills. The rate of such late payment charges shall be as established for each such corporation by order of the public service commission, but bills rendered to the state shall not be considered delinquent until thirty days after rendition of the bill by the corporation.

4. Any such interest charges or late payment charges shall be paid from appropriations which were made for the fiscal year in which the supplies or services were delivered to the respective departments purchasing such supplies or services. The commissioner of administration shall be responsible for the timely implementation of this section and all officers, departments, institutions and agencies of state government shall fully cooperate with the commissioner of administration in the implementation of this section. No late payment penalty shall be assessed against, nor payable by, the state unless pursuant to the provisions of this section.

5. Notwithstanding any other provision of this section, recipients of funds from the low-income energy assistance program shall be exempt from interest charges imposed by such section for the duration of the recipient's participation in the program.

34.057. 1. Unless contrary to any federal funding requirements or unless funds from a state grant are not timely received by the contracting public municipality but notwithstanding any other law to the contrary, all public works contracts made and awarded by the appropriate officer, board or agency of the state or of a political subdivision of the state or of any district therein, including any municipality, county and any board referred to as the public owner, for construction, reconstruction or alteration of any public works project, shall provide for prompt

7 payment by the public owner to the contractor and prompt payment by the contractor to the
8 subcontractor and material supplier in accordance with the following:

9 (1) A public owner shall make progress payments to the contractor on at least a monthly
10 basis as the work progresses, or, on a lump sum basis according to the terms of the lump sum
11 contract. Except in the case of lump sum contracts, payments shall be based upon estimates
12 prepared at least monthly of work performed and material delivered, as determined by the project
13 architect or engineer. Retainage withheld on public works projects shall not exceed five percent
14 of the value of the contract or subcontract unless the public owner and the architect or engineer
15 determine that a higher rate of retainage is required to ensure performance of the contract.
16 Retainage, however, shall not exceed ten percent of the value of the contract or subcontract.
17 Except as provided in subsection 4 of this section, the public owner shall pay the contractor the
18 amount due, less a retainage not to exceed ten percent, within thirty days following the latter of
19 the following:

20 (a) The date of delivery of materials or construction services purchased;

21 (b) The date, as designated by the public owner, upon which the invoice is duly delivered
22 to the person or place designated by the public owner; or

23 (c) In those instances in which the contractor approves the public owner's estimate, the
24 date upon which such notice of approval is duly delivered to the person or place designated by
25 the public owner;

26 (2) Payments shall be considered received within the context of this section when they
27 are duly posted with the United States Postal Service or other agreed upon delivery service or
28 when they are hand-delivered to an authorized person or place as agreed to by the contracting
29 parties;

30 (3) If, in the discretion of the owner and the project architect or engineer and the
31 contractor, it is determined that a subcontractor's performance has been completed and the
32 subcontractor can be released prior to substantial completion of the public works contract
33 without risk to the public owner, the contractor shall request such adjustment in retainage, if any,
34 from the public owner as necessary to enable the contractor to pay the subcontractor in full. The
35 public owner may reduce or eliminate retainage on any contract payment if, in the public owner's
36 opinion, the work is proceeding satisfactorily. If retainage is released and there are any
37 remaining minor items to be completed, an amount equal to two hundred percent of the value
38 of each item as determined by the public owner's duly authorized representative shall be withheld
39 until such item or items are completed;

40 (4) The public owner shall pay the retainage, less any offsets or deductions authorized
41 in the contract or otherwise authorized by law, to the contractor after substantial completion of
42 the contract work and acceptance by the public owner's authorized contract representative, or as

43 may otherwise be provided by the contract specifications for state highway, road or bridge
44 projects administered by the state highways and transportation commission. Such payment shall
45 be made within thirty days after acceptance, and the invoice and all other appropriate
46 documentation and certifications in complete and acceptable form are provided, as may be
47 required by the contract documents. If at that time there are any remaining minor items to be
48 completed, an amount equal to two hundred percent of the value of each item as determined by
49 the public owner's representative shall be withheld until such items are completed;

50 (5) All estimates or invoices for supplies and services purchased, approved and
51 processed, or final payments, shall be paid promptly and shall be subject to late payment charges
52 provided in this section. Except as provided in subsection 4 of this section, if the contractor has
53 not been paid within thirty days as set forth in subdivision (1) of subsection 1 of this section, the
54 contracting agency shall pay the contractor, in addition to the payment due him, interest at the
55 rate [of one and one-half percent per month] **set by section 32.065** calculated from the expiration
56 of the thirty-day period until fully paid;

57 (6) When a contractor receives any payment, the contractor shall pay each subcontractor
58 and material supplier in proportion to the work completed by each subcontractor and material
59 supplier his application less any retention not to exceed ten percent. If the contractor receives
60 less than the full payment due under the public construction contract, the contractor shall be
61 obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors
62 and material suppliers each receiving a prorated portion based on the amount of payment. When,
63 however, the public owner does not release the full payment due under the contract because there
64 are specific areas of work or materials he is rejecting or because he has otherwise determined
65 such areas are not suitable for payment then those specific subcontractors or suppliers involved
66 shall not be paid for that portion of the work rejected or deemed not suitable for payment and all
67 other subcontractors and suppliers shall be paid in full;

68 (7) If the contractor, without reasonable cause, fails to make any payment to his
69 subcontractors and material suppliers within fifteen days after receipt of payment under the
70 public construction contract, the contractor shall pay to his subcontractors and material suppliers,
71 in addition to the payment due them, interest in the amount of one and one-half percent per
72 month, calculated from the expiration of the fifteen-day period until fully paid. This subdivision
73 shall also apply to any payments made by subcontractors and material suppliers to their
74 subcontractors and material suppliers and to all payments made to lower tier subcontractors and
75 material suppliers throughout the contracting chain;

76 (8) The public owner shall make final payment of all moneys owed to the contractor, less
77 any offsets or deductions authorized in the contract or otherwise authorized by law, within thirty

78 days of the due date. Final payment shall be considered due upon the earliest of the following
79 events:

80 (a) Completion of the project and filing with the owner of all required documentation
81 and certifications, in complete and acceptable form, in accordance with the terms and conditions
82 of the contract;

83 (b) The project is certified by the architect or engineer authorized to make such
84 certification on behalf of the owner as having been completed, including the filing of all
85 documentation and certifications required by the contract, in complete and acceptable form; or

86 (c) The project is certified by the contracting authority as having been completed,
87 including the filing of all documentation and certifications required by the contract, in complete
88 and acceptable form.

89 2. Nothing in this section shall prevent the contractor or subcontractor, at the time of
90 application or certification to the public owner or contractor, from withholding such applications
91 or certifications to the owner or contractor for payment to the subcontractor or material supplier.
92 Amounts intended to be withheld shall not be included in such applications or certifications to
93 the public owner or contractor. Reasons for withholding such applications or certifications shall
94 include, but not be limited to, the following: unsatisfactory job progress; defective construction
95 work or material not remedied; disputed work; failure to comply with other material provisions
96 of the contract; third party claims filed or reasonable evidence that a claim will be filed; failure
97 of the subcontractor to make timely payments for labor, equipment and materials; damage to a
98 contractor or another subcontractor or material supplier; reasonable evidence that the contract
99 can not be completed for the unpaid balance of the subcontract sum or a reasonable amount for
100 retention, not to exceed the initial percentage retained by the owner.

101 3. Should the contractor determine, after application or certification has been made and
102 after payment has been received from the public owner, or after payment has been received by
103 a contractor based upon the public owner's estimate of materials in place and work performed
104 as provided by contract, that all or a portion of the moneys needs to be withheld from a specific
105 subcontractor or material supplier for any of the reasons enumerated in this section, and such
106 moneys are withheld from such subcontractor or material supplier, then such undistributed
107 amounts shall be specifically identified in writing and deducted from the next application or
108 certification made to the public owner or from the next estimate by the public owner of payment
109 due the contractor, until a resolution of the matter has been achieved. Disputes shall be resolved
110 in accordance with the terms of the contract documents. Upon such resolution the amounts
111 withheld by the contractor from the subcontractor or material supplier shall be included in the
112 next application or certification made to the public owner or the next estimate by the public
113 owner and shall be paid promptly in accordance with the provisions of this section. This

114 subsection shall also apply to applications or certifications made by subcontractors or material
115 suppliers to the contractor and throughout the various tiers of the contracting chain.

116 4. The contracts which provide for payments to the contractor based upon the public
117 owner's estimate of materials in place and work performed rather than applications or
118 certifications submitted by the contractor, the public owner shall pay the contractor within thirty
119 days following the date upon which the estimate is required by contract to be completed by the
120 public owner, the amount due less a retainage not to exceed five percent. All such estimates by
121 the public owner shall be paid promptly and shall be subject to late payment charges as provided
122 in this subsection. After the thirtieth day following the date upon which the estimate is required
123 by contract to be completed by the public owner, the contracting agency shall pay the contractor,
124 in addition to the payment due him, interest at a rate [of one and one-half percent per month] **set**
125 **by section 32.065** calculated from the expiration of the thirty-day period until fully paid.

126 5. Nothing in this section shall prevent the owner from withholding payment or final
127 payment from the contractor, or a subcontractor or material supplier. Reasons for withholding
128 payment or final payment shall include, but not be limited to, the following: liquidated damages;
129 unsatisfactory job progress; defective construction work or material not remedied; disputed
130 work; failure to comply with any material provision of the contract; third party claims filed or
131 reasonable evidence that a claim will be filed; failure to make timely payments for labor,
132 equipment or materials; damage to a contractor, subcontractor or material supplier; reasonable
133 evidence that a subcontractor or material supplier cannot be fully compensated under its contract
134 with the contractor for the unpaid balance of the contract sum; or citation by the enforcing
135 authority for acts of the contractor or subcontractor which do not comply with any material
136 provision of the contract and which result in a violation of any federal, state or local law,
137 regulation or ordinance applicable to that project causing additional costs or damages to the
138 owner.

139 6. Notwithstanding any other provisions in this section to the contrary, no late payment
140 interest shall be due and owing for payments which are withheld in good faith for reasonable
141 cause pursuant to subsections 2 and 5 of this section. If it is determined by a court of competent
142 jurisdiction that a payment which was withheld pursuant to subsections 2 and 5 of this section
143 was not withheld in good faith for reasonable cause, the court may impose interest at the rate [of
144 one and one-half percent per month] **set by section 32.065** calculated from the date of the
145 invoice and may, in its discretion, award reasonable attorney fees to the prevailing party. In any
146 civil action or part of a civil action brought pursuant to this section, if a court determines after
147 a hearing for such purpose that the cause was initiated, or a defense was asserted, or a motion
148 was filed, or any proceeding therein was done frivolously and in bad faith, the court shall require
149 the party who initiated such cause, asserted such defense, filed such motion, or caused such

150 proceeding to be had to pay the other party named in such action the amount of the costs
151 attributable thereto and reasonable expenses incurred by such party, including reasonable
152 attorney fees.

160.281. If a student ceases his study prior to receiving a degree, any scholarship
2 received under the provisions of sections 160.276, 160.278, 160.281 and 160.283 shall be treated
3 as a loan to the student and interest at the rate [of nine and one-half percent] **set by section**
4 **32.065** per year shall be charged upon the unpaid balance of the amount received from the date
5 the student ceases his study until the amount received is paid back to the state. In order to
6 provide for the servicing of such loans, the department of elementary and secondary education
7 may sell such loans to the higher education loan authority of the state of Missouri created under
8 sections 173.350 to 173.450.

160.283. Every student receiving scholarships under the provisions of sections 160.276,
2 160.278, 160.281 and 160.283 shall teach in an elementary or secondary public school in this
3 state for a period of five years after receiving a degree or the scholarship shall be treated as a loan
4 to the student and interest at the rate [of nine and one-half percent] **set by section 32.065** per year
5 shall be charged upon the unpaid balance of the amount received from the date the student ceases
6 to teach until the amount received is paid back to the state. In order to provide for the servicing
7 of such loans, the department of elementary and secondary education may sell such loans to the
8 higher education loan authority of the state of Missouri created under sections 173.350 to
9 173.450. For each year that the student teaches up to five years, one-fifth of the amount which
10 was received under sections 160.276, 160.278, 160.281 and 160.283 shall be applied against the
11 total amount received and shall not be subject to the repayment requirement of this section.

161.421. If a student ceases his study prior to receiving a degree, any scholarship
2 received under the provisions of sections 161.415 to 161.424 shall be treated as a loan to the
3 student and interest at the rate [of nine and one-half percent] **set by section 32.065** per year shall
4 be charged upon the unpaid balance of the amount received from the date the student ceases his
5 study until the amount received is paid back to the state.

161.424. 1. Every student receiving scholarships under the provisions of sections
2 161.415 to 161.424 shall teach in an elementary or secondary public school in this state for a
3 period of five years after receiving a degree or the scholarship shall be treated as a loan to the
4 student and interest at the rate [of nine and one-half percent] **set by section 32.065** per year shall
5 be charged upon the unpaid balance of the amount received from the date the student ceases to
6 teach until the amount received is paid back to the state. For each year that the student teaches
7 up to five years, one-fifth of the amount which was received under sections 161.415 to 161.424
8 shall be applied against the total amount received and shall not be subject to the repayment
9 requirement of this section.

10 2. The state board of education shall have the power to and shall defer interest and
11 principal payments under certain circumstances, which shall include, but need not be limited to,
12 the enrollment in a graduate program, service in any branch of the armed forces of the United
13 States, or teaching in areas of critical need as defined by the state board.

287.160. 1. Except as provided in section 287.140, no compensation shall be payable
2 for the first three days or less of disability during which the employer is open for the purpose of
3 operating its business or enterprise unless the disability shall last longer than fourteen days. If
4 the disability lasts longer than fourteen days, payment for the first three days shall be made
5 retroactively to the claimant.

6 2. Compensation shall be payable as the wages were paid prior to the injury, but in any
7 event at least once every two weeks. If an injured employee claims benefits pursuant to this
8 section, an employer may, if the employee agrees in writing, pay directly to the employee any
9 benefits due pursuant to section 287.170. The employer shall continue such payments until the
10 insurer starts making the payments or the claim is contested by any party. Where the claim is
11 found to be compensable the employer's workers' compensation insurer shall indemnify the
12 employer for any payments made pursuant to this subsection. If the employee's claim is found
13 to be fraudulent or noncompensable, after a hearing, the employee shall reimburse the employer,
14 or the insurer if the insurer has indemnified the employer, for any benefits received either by a:

- 15 (1) Lump sum payment;
16 (2) Refund of the compensation equivalent of any accumulated sick or disability leave;
17 (3) Payroll deduction; or
18 (4) Secured installment plan. If the employee is no longer employed by such employer,
19 the employer may garnish the employee's wages or execute upon any property, except real estate,
20 of the employee. Nothing in this subsection shall be construed to require any employer to make
21 payments directly to the employee.

22 3. Where weekly benefit payments that are not being contested by the employer or his
23 insurer are due, and if such weekly benefit payments are made more than thirty days after
24 becoming due, the weekly benefit payments that are late shall be increased by [ten percent simple
25 interest] **the rate of interest set by section 32.065** per annum. Provided, however, that if such
26 claim for weekly compensation is contested by the employee, and the employer or his insurer
27 have not paid the disputed weekly benefit payments or lump sum within thirty days of when the
28 administrative law judge's order becomes final, or from the date of a decision by the labor and
29 industrial relations commission, or from the date of the last judicial review, whichever is later,
30 interest on such disputed weekly benefit payments or lump sum so ordered, shall be increased
31 by [ten percent simple interest] **the rate of interest set by section 32.065** per annum beginning
32 thirty days from the date of such order. Provided, however, that if such claims for weekly

33 compensation are contested solely by the employer or insurer, no interest shall be payable until
34 after thirty days after the award of the administrative law judge. The state of Missouri or any of
35 its political subdivisions, as an employer, is liable for any such interest assessed against it for
36 failure to promptly pay on any award issued against it under this chapter.

37 4. Compensation shall be payable in accordance with the rules given in sections 287.170,
38 287.180, 287.190, 287.200, 287.240, and 287.250.

39 5. The employer shall not be entitled to credit for wages or such pay benefits paid to the
40 employee or his dependents on account of the injury or death except as provided in section
41 287.270.

287.745. 1. If the tax imposed by sections 287.690, 287.710, and 287.715 are not paid
2 when due, the taxpayer shall be required to pay, as part of such tax, interest thereon at the rate
3 of [one and one-half percent] **set by section 32.065** per [month for each month or fraction
4 thereof delinquent] **annum**. In the event the state prevails in any dispute concerning an
5 assessment of tax which has not been paid by the taxpayer, interest shall be paid upon the amount
6 found due to the state at the rate [of one and one-half percent] **set by section 32.065** per [month
7 for each month or fraction thereof delinquent] **annum**.

8 2. In any legal contest concerning the amount of tax under sections 287.690, 287.710 and
9 287.715 for a calendar year, the quarterly installments for the following year shall continue to
10 be made based upon the amount assessed by the director of revenue for the year in question. If
11 after the end of any taxable year, the amount of the actual tax due is less than the total amount
12 of the installments actually paid, the amount by which the amount paid exceeds the amount due
13 shall be credited against the tax for the following year and deducted from the quarterly
14 installment otherwise due on June first.

335.233. The department shall establish schedules for repayment of the principal and
2 interest on any financial assistance made under the provisions of sections 335.212 to 335.242.
3 Interest at the rate [of nine and one-half percent] **set by section 32.065** per annum shall be
4 charged on all financial assistance made under the provisions of sections 335.212 to 335.242,
5 but the interest and principal of the total financial assistance granted to a qualified applicant at
6 the time of the successful completion of a nursing degree, diploma program or a practical nursing
7 program shall be forgiven through qualified employment.

408.020. Creditors shall be allowed to receive interest at the rate [of nine percent] **set**
2 **by section 32.065** per annum, when no other rate is agreed upon, for all moneys after they
3 become due and payable, on written contracts, and on accounts after they become due and
4 demand of payment is made; for money recovered for the use of another, and retained without
5 the owner's knowledge of the receipt, and for all other money due or to become due for the
6 forbearance of payment whereof an express promise to pay interest has been made.

408.040. 1. In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

2. Notwithstanding the provisions of subsection 1 of this section, in tort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date of judgment is entered by the trial court until full satisfaction. All such judgments and orders for money shall bear a per annum interest rate equal to the [intended Federal Funds Rate, as established by the Federal Reserve Board, plus five percent,] **rate set by section 32.065** until full satisfaction is made. The judgment shall state the applicable interest rate, which shall not vary once entered. In tort actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives, and to such party's liability insurer if known to the claimant, and the amount of the judgment or order exceeds the demand for payment or offer of settlement, then prejudgment interest shall be awarded, calculated from a date ninety days after the demand or offer was received, as shown by the certified mail return receipt, or from the date the demand or offer was rejected without counter offer, whichever is earlier. In order to qualify as a demand or offer pursuant to this section, such demand must:

(1) Be in writing and sent by certified mail return receipt requested; and

(2) Be accompanied by an affidavit of the claimant describing the nature of the claim, the nature of any injuries claimed and a general computation of any category of damages sought by the claimant with supporting documentation, if any is reasonably available; and

(3) For wrongful death, personal injury, and bodily injury claims, be accompanied by a list of the names and addresses of medical providers who have provided treatment to the claimant or decedent for such injuries, copies of all reasonably available medical bills, a list of employers if the claimant is seeking damages for loss of wages or earning, and written authorizations sufficient to allow the party, its representatives, and liability insurer if known to the claimant to obtain records from all employers and medical care providers; and

(4) Reference this section and be left open for ninety days. Unless the parties agree in writing to a longer period of time, if the claimant fails to file a cause of action in circuit court prior to a date one hundred twenty days after the demand or offer was received, then the court shall not award prejudgment interest to the claimant. If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably appears to be qualified to act as next friend or conservator or personal representative. If the claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to section 537.080 to make

37 claim for the death. Nothing contained herein shall limit the right of a claimant, in actions other
38 than tort actions, to recover prejudgment interest as otherwise provided by law or contract.

39 3. In tort actions, a judgment for prejudgment interest awarded pursuant to this
40 subsection should bear interest at a per annum interest rate equal to the [intended Federal Funds
41 Rate, as established by the Federal Reserve Board, plus three percent] **rate set by section 32.065**.
42 The judgment shall state the applicable interest rate, which shall not vary once entered.

 409.5-509. (a) Enforcement of civil liability under this section is subject to the
2 Securities Litigation Uniform Standards Act of 1998.

3 (b) A person is liable to the purchaser if the person sells a security in violation of section
4 409.3-301 or, by means of an untrue statement of a material fact or an omission to state a
5 material fact necessary in order to make the statement made, in light of the circumstances under
6 which it is made, not misleading, the purchaser not knowing the untruth or omission and the
7 seller not sustaining the burden of proof that the seller did not know and, in the exercise of
8 reasonable care, could not have known of the untruth or omission. An action under this
9 subsection is governed by the following:

10 (1) The purchaser may maintain an action to recover the consideration paid for the
11 security, less the amount of any income received on the security, and interest at the rate [of eight
12 percent] **set by section 32.065** per year from the date of the purchase, costs, and reasonable
13 attorneys' fees determined by the court, upon the tender of the security, or for actual damages as
14 provided in paragraph (3).

15 (2) The tender referred to in paragraph (1) may be made any time before entry of
16 judgment. Tender requires only notice in a record of ownership of the security and willingness
17 to exchange the security for the amount specified. A purchaser that no longer owns the security
18 may recover actual damages as provided in paragraph (3).

19 (3) Actual damages in an action arising under this subsection are the amount that would
20 be recoverable upon a tender less the value of the security when the purchaser disposed of it, and
21 interest at the rate [of eight percent] **set by section 32.065** per year from the date of the purchase,
22 costs, and reasonable attorneys' fees determined by the court.

23 (c) A person is liable to the seller if the person buys a security by means of an untrue
24 statement of a material fact or omission to state a material fact necessary in order to make the
25 statement made, in light of the circumstances under which it is made, not misleading, the seller
26 not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that
27 the purchaser did not know, and in the exercise of reasonable care, could not have known of the
28 untruth or omission. An action under this subsection is governed by the following:

29 (1) The seller may maintain an action to recover the security, and any income received
30 on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of
31 the purchase price, or for actual damages as provided in paragraph (3).

32 (2) The tender referred to in paragraph (1) may be made any time before entry of
33 judgment. Tender requires only notice in a record of the present ability to pay the amount
34 tendered and willingness to take delivery of the security for the amount specified. If the
35 purchaser no longer owns the security, the seller may recover actual damages as provided in
36 paragraph (3).

37 (3) Actual damages in an action arising under this subsection is the difference between
38 the price at which the security was sold and the value the security would have had at the time of
39 the sale in the absence of the purchaser's conduct causing liability, and interest at the rate [of
40 eight percent] **set by section 32.065 plus one percent** per year from the date of the sale of the
41 security, costs, and reasonable attorneys' fees determined by the court.

42 (d) A person acting as a broker-dealer or agent that sells or buys a security in violation
43 of section 409.4-401(a), 409.4-402(a), or 409.5-506 is liable to the customer. The customer, if
44 a purchaser, may maintain an action for recovery of actual damages as specified in subsections
45 (b)(1) to (3), or, if a seller, for a remedy as specified in subsections (c)(1) to (3).

46 (e) A person acting as an investment adviser or investment adviser representative that
47 provides investment advice for compensation in violation of section 409.4-403(a), 409.4-404(a),
48 or 409.5-506 is liable to the client. The client may maintain an action to recover the
49 consideration paid for the advice, interest at the rate [of eight percent] **set by section 32.065** per
50 year from the date of payment, costs, and reasonable attorneys' fees determined by the court.

51 (f) A person that receives directly or indirectly any consideration for providing
52 investment advice to another person and that employs a device, scheme, or artifice to defraud the
53 other person or engages in an act, practice, or course of business that operates or would operate
54 as a fraud or deceit on the other person is liable to the other person. An action under this
55 subsection is governed by the following:

56 (1) The person defrauded may maintain an action to recover the consideration paid for
57 the advice and the amount of any actual damages caused by the fraudulent conduct, interest at
58 the rate [of eight percent] **set by section 32.065 plus one percent** per year from the date of the
59 fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount
60 of any income received as a result of the fraudulent conduct.

61 (2) This subsection does not apply to a broker-dealer or its agents if the investment
62 advice provided is solely incidental to transacting business as a broker-dealer and no special
63 compensation is received for the investment advice.

64 (g) The following persons are liable jointly and severally with and to the same extent as
65 persons liable under subsections (b) to (f):

66 (1) A person that directly or indirectly controls a person liable under subsections (b) to
67 (f), unless the controlling person sustains the burden of proof that the person did not know, and
68 in the exercise of reasonable care could not have known, of the existence of conduct by reason
69 of which the liability is alleged to exist;

70 (2) An individual who is a managing partner, executive officer, or director of a person
71 liable under subsections (b) to (f), including an individual having a similar status or performing
72 similar functions, unless the individual sustains the burden of proof that the individual did not
73 know and, in the exercise of reasonable care could not have known, of the existence of conduct
74 by reason of which the liability is alleged to exist;

75 (3) An individual who is an employee of or associated with a person liable under
76 subsections (b) to (f) and who materially aids the conduct giving rise to the liability, unless the
77 individual sustains the burden of proof that the individual did not know and, in the exercise of
78 reasonable care could not have known, of the existence of conduct by reason of which the
79 liability is alleged to exist; and

80 (4) A person that is a broker-dealer, agent, investment adviser, or investment adviser
81 representative that materially aids the conduct giving rise to the liability under subsections (b)
82 to (f), unless the person sustains the burden of proof that the person did not know and, in the
83 exercise of reasonable care could not have known, of the existence of conduct by reason of which
84 liability is alleged to exist.

85 (h) A person liable under this section has a right of contribution as in cases of contract
86 against any other person liable under this section for the same conduct.

87 (i) A cause of action under this section survives the death of an individual who might
88 have been a plaintiff or defendant.

89 (j) A person may not obtain relief:

90 (1) Under subsection (b) for violation of section 409.3-301, or under subsection (d) or
91 (e), unless the action is instituted within one year after the violation occurred; or

92 (2) Under subsection (b), other than for violation of section 409.3-301, or under
93 subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery
94 of the facts constituting the violation or five years after the violation.

95 (k) A person that has made, or has engaged in the performance of, a contract in violation
96 of this act or a rule adopted or order issued under this act, or that has acquired a purported right
97 under the contract with knowledge of conduct by reason of which its making or performance was
98 in violation of this act, may not base an action on the contract.

(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(m) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or section 409.4-411(e).

409.6-604. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment adviser under section 409.4-403(b)(1)(C); or

(3) Issue an order under section 409.2-204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536 and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may:

(1) Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;

31 (2) Order a person subject to the order to pay restitution for any loss, including the
32 amount of any actual damages that may have been caused by the conduct and interest at the rate
33 [of eight percent] **set by section 32.065 plus one percent** per year from the date of the violation
34 causing the loss or disgorge any profits arising from the violation;

35 (3) In addition to any civil penalty otherwise provided by law, impose an additional civil
36 penalty not to exceed five thousand dollars for each such violation if the commissioner finds that
37 a person subject to the order has violated any provision of this act and that such violation was
38 committed against an elderly or disabled person. For purposes of this section, the following
39 terms mean:

40 (A) "Disabled person", a person with a physical or mental impairment that substantially
41 limits one or more of the major life activities of such individual, a record of such impairment,
42 or being regarded as having such an impairment;

43 (B) "Elderly person", a person sixty years of age or older.

44 (e) In a final order, the commissioner may charge the actual cost of an investigation or
45 proceeding for a violation of this act or a rule adopted or order issued under this act. These funds
46 may be paid into the investor education and protection fund.

47 (f) If a petition for judicial review of a final order is not filed in accordance with section
48 409.6-609, the commissioner may file a certified copy of the final order with the clerk of a court
49 of competent jurisdiction. The order so filed has the same effect as a judgment of the court and
50 may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

51 (g) If a person does not comply with an order under this section, the commissioner may
52 petition a court of competent jurisdiction to enforce the order. The court may not require the
53 commissioner to post a bond in an action or proceeding under this section. If the court finds,
54 after service and opportunity for hearing, that the person was not in compliance with the order,
55 the court may adjudge the person in civil contempt of the order. The court may impose a further
56 civil penalty against the person for contempt in an amount not less than five thousand dollars but
57 not greater than one hundred thousand dollars for each violation and may grant any other relief
58 the court determines is just and proper in the circumstances.

59 (h) The commissioner is authorized to issue administrative consent orders in the
60 settlement of any proceeding in the public interest under this act.

414.356. 1. Using the fund created in section 414.359, the division shall provide loans
2 of:

3 (1) A maximum of two thousand dollars for the incremental cost of purchasing a new
4 vehicle capable of operating on an alternative fuel;

5 (2) A maximum of two thousand dollars for the conversion of a new or existing vehicle
6 designed to operate on gasoline to enable such vehicle to operate on an alternative fuel; and

7 (3) A maximum of one hundred thousand dollars for the construction of a fueling station
8 capable of dispensing an alternative fuel.

9 2. No political subdivision shall receive in aggregate more than one hundred thousand
10 dollars in loans for the purchase or conversion of alternative fuel vehicles in any one year.

11 3. No political subdivision shall receive in aggregate more than one hundred thousand
12 dollars in loans for the construction of fueling stations in any one year.

13 4. The division shall establish the interest rate **at the rate set by section 32.065** and
14 **establish** terms of repayment for each loan agreement established pursuant to sections 414.350
15 to 414.359. In establishing the repayment schedule, the division shall consider the projected
16 savings to the political subdivision resulting from use of an alternative fuel, but such repayment
17 schedule shall be for a maximum repayment period of four years and shall include provisions for
18 payments to be made on a monthly basis.

19 5. Any political subdivision that receives a loan pursuant to sections 414.350 to 414.359
20 shall:

21 (1) Remit payments on the repayment schedule established by the division;

22 (2) Agree to use the alternative fuel for which vehicles purchased with the aid of such
23 loans were designed;

24 (3) Provide reasonable data requested by the division on the use and performance of
25 vehicles purchased with the aid of such loans;

26 (4) Allow for reasonable inspections by the division of vehicles purchased and fueling
27 stations constructed with the aid of such loans; and

28 (5) Make fueling stations constructed with the aid of such loans available for use at
29 reasonable cost by the vehicle fleets of other political subdivisions and, with consideration of the
30 capacity of such fueling stations, by the general public.

414.570. 1. The council shall set the initial assessment at no greater than one-tenth of
2 one cent per gallon. Thereafter, annual assessments shall be sufficient to cover the costs of the
3 plans and programs developed by the council and approved by the director. The assessment shall
4 not be greater than one-half cent per gallon of odorized propane. The assessment may not be
5 raised by more than one-tenth of one cent per gallon annually.

6 2. The owner of propane immediately prior to odorization in this state or the owner at
7 the time of import into this state of odorized propane shall be responsible for the payment of the
8 assessment on the volume of propane at the time of import or odorization, whichever is later.
9 Assessments shall be remitted to the council on a monthly basis by the twenty-fifth of the month
10 following the month of collection. Nonodorized propane shall not be subject to assessment until
11 odorized.

12 3. The director may by regulation, with the concurrence of the council, establish an
13 alternative means for the council to collect the assessment if another means is found to be more
14 efficient and effective. The director may by regulation establish a late payment charge and rate
15 of interest, **that is equal to the rate set by section 32.065 plus one percent**, to be imposed on
16 any person who fails to remit to the council any amount due under sections 414.500 to 414.590.

17 4. Pending disbursement pursuant to a program, plan or project, the council may invest
18 funds collected through assessments and any other funds received by the council only in
19 obligations of the United States or any agency thereof, in general obligations of any state or any
20 political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank
21 that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal
22 and interest by the United States.

23 5. The National Propane Education and Research Council, in conjunction with the
24 United States Secretary of Energy may, by regulation, establish a program coordinating the
25 operation of its council with the council established in section 414.530. This may include an
26 assessment rebate, if adopted, of an amount up to twenty-five percent of the National Propane
27 Education and Research Council assessment collected on Missouri distributed odorized propane
28 as presented and described in section nine of the federal Propane Education and Research Act
29 of 1992. Should the National Propane Education and Research Council, as part of the federal
30 Propane Education and Research Act of 1992, establish such an assessment rebate on fees
31 collected by such council, then all funds from such federal assessment rebate shall be the
32 property of the Missouri council as established by section 414.530, and the use of such funds
33 shall be determined by the Missouri council for the purposes as intended and presented in
34 sections 414.500 to 414.590.

 444.870. 1. Any permittee who violates any permit condition or any provision of the
2 reclamation plan or who violates any provision of this law or rules and regulations may be
3 assessed an administrative penalty by the commission, except that if such violation leads to the
4 issuance of a cessation order under section 444.885 the penalty shall be assessed. Such penalty
5 shall not exceed five thousand dollars for each violation. Each day of continuing violation may
6 be deemed a separate violation for purposes of penalty assessments. In determining the amount
7 of the penalty, consideration shall be given to the permittee's history of previous violations at the
8 particular surface coal mining operation; the seriousness of the violation, including any
9 irreparable harm to the environment and any hazard to the health or safety of the public; whether
10 the permittee was negligent; and the demonstrated good faith of the permittee charged in
11 attempting to achieve rapid compliance after notification of the violation.

12 2. An administrative penalty shall be assessed by the commission only after the person
13 charged has been given an opportunity for a public hearing. When such a public hearing has

14 been held, the commission shall make findings of fact and conclusions of law, and shall issue
15 a written decision as to the occurrence of the violation and the amount of the penalty which is
16 warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid.
17 When appropriate, the commission shall consolidate such hearings with other proceedings under
18 section 444.885. Any hearing under this section shall be of record and shall be a contested case.
19 The chairman may designate one commission member as hearing officer, or may appoint a
20 member in good standing of the Missouri bar as hearing officer to hold the hearing and make
21 recommendations to the commission, but the commission shall make the final decision therein
22 and any member participating in the decision shall review the record before making decision.
23 Where the person charged with such a violation fails to avail himself of the opportunity for a
24 public hearing, an administrative penalty shall be assessed and ordered paid only after the
25 commission has determined that a violation did occur and the amount of the penalty which is
26 warranted.

27 3. When the director believes that a violation has occurred he may, or if a cessation order
28 has resulted he shall, file with the commission and serve the operator by registered mail a notice
29 charging a violation has occurred and setting forth the proposed amount of said penalty. The
30 operator, if he wishes to contest either the amount of the penalty or the fact of the violation, may
31 within thirty days of receipt of the notice request a hearing before the commission. The operator
32 shall, with such request, file with the commission a penalty bond in the amount of the proposed
33 penalty, in a form prescribed by the commission, with security attached in the form of a
34 certificate of deposit, conditioned upon forfeiture upon a final nonappealable decision. If
35 through administrative or judicial review, it is determined that no violation occurred, or that the
36 amount of the penalty should be reduced, the commission shall within thirty days of such
37 determination release said bond and remit the appropriate amount to the person, with interest at
38 the rate [of six percent, or at the prevailing United States Department of the Treasury rate,
39 whichever is greater] **set by section 32.065**. Failure to file the bond with the request for hearing
40 shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

41 4. Administrative penalties, plus interest at the rate [of six percent, or at the prevailing
42 United States Department of the Treasury rate, whichever is greater] **set by section 32.065 plus**
43 **one percent**, plus attorney's fees, may be recovered in a civil action brought by the attorney
44 general at the request of the commission in the county where the violation occurred or in Cole
45 County.

46 5. Any person who willfully and knowingly violates a condition of a permit or fails or
47 refuses to comply with any order issued under section 444.885 or section 444.900, or any order
48 incorporated in a final decision issued by the commission, except an order incorporated in a
49 decision issued under subsection 2 of this section shall, upon conviction, be punished by a fine

50 of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

51 6. Whenever a corporate permittee violates a condition of a permit or fails or refuses to
52 comply with any order issued under section 444.885, or any order incorporated in a final decision
53 issued by the commission, except an order incorporated in a decision issued under subsection
54 2 of this section, any director, officer, or agent of such corporation who willfully and knowingly
55 authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same
56 administrative penalties, fines and imprisonment that may be imposed upon a person under
57 subsections 1 and 5 of this section.

58 7. Whoever knowingly makes any false statement, representation, or certification, or
59 knowingly fails to make any statement, representation, or certification in any application, record,
60 report, plan, or other document filed or required to be maintained shall, upon conviction, be
61 punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than
62 one year, or both.

63 8. Any operator who fails to correct a violation for which a citation has been issued
64 under subsection 1 of section 444.885 within the period permitted for its correction (which
65 period shall not end until the entry of a final order by the commission, in the case of any review
66 proceedings under section 444.895 initiated by the operator wherein the commission orders, after
67 an expedited hearing, the suspension of the abatement requirements of the citation after
68 determining that the operator will suffer irreparable loss or damage from the application of those
69 requirements, or until the entry of an order of the court, in the case of any review proceedings
70 under section 444.900 initiated by the operator wherein the court orders the suspension of the
71 abatement requirements of the citation) shall be assessed an administrative penalty by the
72 commission of not less than seven hundred fifty dollars, nor more than five thousand dollars for
73 each day during which such failure or violation continues.

447.539. 1. Every person holding funds or other property, tangible or intangible,
2 presumed abandoned pursuant to sections 447.500 to 447.595 shall report to the treasurer with
3 respect to the abandoned property as provided in this section.

4 2. The report shall be verified by the person filing the report and shall include:

5 (1) The name, if known, and last known address, if any, of each person appearing from
6 the records of the holder to be the owner of any property of the value of fifty dollars or more
7 presumed abandoned pursuant to sections 447.500 to 447.595;

8 (2) The nature and identifying number, if any, or description of the property and the
9 amount appearing from the records to be due, except that items of value under fifty dollars each
10 may be reported in aggregate;

11 (3) The date when the property became payable, demandable, or returnable, and the date
12 of the last transaction with the owner with respect to the property; and

13 (4) Other information under the control of the holder which the treasurer prescribes by
14 rule as necessary for the administration of sections 447.500 to 447.595; however, the treasurer
15 shall not request a history of fees and charges on the property in question for information prior
16 to the cutoff date for reporting. Should the case be referred to the attorney general for legal
17 action, the attorney general may examine records that are retained under the authority applicable
18 to the entity's record retention law.

19 3. If the person holding property presumed abandoned is a successor to other persons
20 who previously held the property for the owner, or if the holder has changed his or her name
21 while holding the property, the person shall file with his or her report all prior known names and
22 addresses of each holder of the property.

23 4. Except for the year ending June 30, 1984, the report shall be filed before November
24 first of each year as of June thirtieth next preceding, but the report of life insurance corporations
25 shall be filed before May first of each year as of December thirty-first next preceding. The report
26 for the year ending June 30, 1984, may be combined with the report for the year ending June 30,
27 1985, and may be included in the report due on November 1, 1985. The treasurer may extend
28 the reporting deadline for periods of thirty days upon written request by any person required to
29 file a report.

30 5. If the holder of property presumed abandoned pursuant to sections 447.500 to 447.595
31 knows the whereabouts of the owner, if the owner's claim has not been barred by the statute of
32 limitations, and the property involved is valued at fifty dollars or more, the holder shall, before
33 filing the annual report, communicate with the owner and take necessary steps to prevent
34 abandonment from being presumed. The holder shall exercise such reasonable and necessary
35 diligence as is consistent with good business practice to ascertain the whereabouts of such owner
36 of property valued at fifty dollars or more within one year prior to reporting the property to the
37 state treasurer.

38 6. Verification, if made by a partnership, shall be executed by a partner; if made by an
39 unincorporated association or corporation, by an officer.

40 7. If the treasurer determines that the person holding property presumed abandoned
41 failed to exercise such reasonable and necessary diligence as is consistent with good business
42 practice to ascertain the whereabouts of a property owner, the treasurer may impose a penalty on
43 such holder of up to twenty percent of the value of the property returned to the owner by the
44 treasurer.

45 8. Any amount (including any penalty) assessed against a holder of property presumed
46 abandoned by the treasurer pursuant to sections 447.500 to 447.595 shall be due and payable to
47 the treasurer thirty days after the holder has received written notice of such assessment, unless
48 the holder has filed a written request for reconsideration by the treasurer. Any amount assessed

49 against a holder upon reconsideration by the treasurer shall be deemed the final decision of the
50 treasurer and shall be due and payable thirty days after the holder has received written notice of
51 such final decision. Any assessment that remains unpaid forty-five days after the holder has
52 received written notice of the final decision by the treasurer shall accrue interest at the rate [of
53 one and one-half percent per month] **set by section 32.065 plus one percent**, which interest
54 shall be added to and included in the amount due and payable to the treasurer. The treasurer
55 may, for good cause, waive in part, or in whole, any penalty (including interest) assessed against
56 the holder pursuant to sections 447.500 to 447.595. The treasurer is authorized to take the
57 appropriate legal action necessary to collect any unpaid assessment pursuant to sections 447.500
58 to 447.595. Any penalty imposed and collected by the treasurer pursuant to the provisions of
59 sections 447.500 to 447.595 shall be deposited in the state general revenue fund.

60 9. The holder shall retain such records necessary to verify the relationship of the owner
61 to the holder for a period of not less than five years subsequent to reporting the property to the
62 treasurer.

63 10. If a holder has failed to retain records sufficient to allow the treasurer to determine
64 the holder's compliance with sections 447.500 to 447.595, the treasurer shall use estimation
65 techniques, in accordance with generally accepted accounting principles to determine the amount
66 of abandoned property that is reportable for and limited to the most current reportable
67 abandonment period. In cases where multiple states have examined a holder, the treasurer may
68 use reasonable estimation techniques in accordance with generally accepted accounting
69 principles to determine the holder's compliance with sections 447.500 to 447.595, for all
70 reportable periods that were subject to the examination. The amount determined by such
71 methods shall be used as the amount of property presumed abandoned in the holder's report of
72 such property to the treasurer. The holder may contest the estimation techniques used by the
73 treasurer in an appeal de novo to a circuit court of competent jurisdiction.

630.460. 1. For the purposes of this section, the term "overpayment" means any payment
2 by the department to a vendor providing care, treatment, habilitation or rehabilitation services
3 to clients under contract with the department, which is:

4 (1) In excess of the contracted rate less payments by the client or on his behalf as
5 required to be made by the standard means test contained in department rules;

6 (2) In payment of services not provided;

7 (3) In payment for any service not authorized in the contract with the department; or

8 (4) In payment for services provided contrary to the provisions of the contract with the
9 department.

10 2. The department shall notify the vendor in writing by certified mail, return receipt
11 requested, of the amount of the overpayment, the basis for such overpayment and request

12 reimbursement. Within thirty days of receipt of the notice of overpayment, a provider may
13 request a review of the overpayment and reimbursement request by the department director or
14 his designee. Such review shall be conducted in person if requested by the provider. The
15 department director or his designee shall review the overpayment within fifteen days of the
16 request for review.

17 3. If any overpayment is not fully repaid within forty-five days of the date of notice of
18 overpayment, the department shall assess interest on the unpaid balance. Interest shall be
19 charged on any unpaid balance beginning from the date of notice of overpayment and shall
20 accrue at a rate not to exceed the annual rate established pursuant to the provisions of section
21 32.065, plus [three] **one** percentage [points] **point**.

22 4. The department and the vendor shall have forty-five days from receipt of the notice
23 of the overpayment to negotiate a repayment plan to recover the amount of the overpayment as
24 finally determined plus accrued interest at the rate established in subsection 3 of this section over
25 a period determined by the department, but not to exceed twelve months from the date of final
26 disposition of any overpayment review authorized by this section. The department shall
27 determine the method of repayment which may include direct payment by the vendor, deduction
28 from future amounts due to the vendor from the department, or both.

29 5. If any overpayment plus accrued interest not subject to a repayment plan pursuant to
30 subsection 4 of this section is not fully repaid within six months of the date of notice of
31 overpayment, the department may certify the amount due to the office of the attorney general,
32 or take other appropriate collection actions. If any portion of an overpayment plus accrued
33 interest which is subject to a repayment plan pursuant to subsection 4 of this section, but which
34 is not repaid pursuant to the terms of the plan, the department may certify all or a portion of the
35 overpayment plus accrued interest due to the office of the attorney general, or take other
36 appropriate collection actions.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections
2 643.010 to 643.355 shall pay annually beginning April 1, 1993, a fee as provided herein. For the
3 first year the fee shall be twenty-five dollars per ton of each regulated air contaminant emitted.
4 Thereafter, the fee shall be set every three years by the commission by rule and shall be at least
5 twenty-five dollars per ton of regulated air contaminant emitted but not more than forty dollars
6 per ton of regulated air contaminant emitted in the previous calendar year. If necessary, the
7 commission may make annual adjustments to the fee by rule. The fee shall be set at an amount
8 consistent with the need to fund the reasonable cost of administering sections 643.010 to
9 643.355, taking into account other moneys received pursuant to sections 643.010 to 643.355.
10 For the purpose of determining the amount of air contaminant emissions on which the fees
11 authorized under this section are assessed, a facility shall be considered one source under the

12 definition of subsection 2 of section 643.078, except that a facility with multiple operating
13 permits shall pay the emission fees authorized under this section separately for air contaminants
14 emitted under each individual permit.

15 2. A source which produces charcoal from wood shall pay an annual emission fee under
16 this subsection in lieu of the fee established in subsection 1 of this section. The fee shall be
17 based upon a maximum fee of twenty-five dollars per ton and applied upon each ton of regulated
18 air contaminant emitted for the first four thousand tons of each contaminant emitted in the
19 amount established by the commission pursuant to subsection 1 of this section, reduced
20 according to the following schedule:

21 (1) For fees payable under this subsection in the years 1993 and 1994, the fee shall be
22 reduced by one hundred percent;

23 (2) For fees payable under this subsection in the years 1995, 1996 and 1997, the fee shall
24 be reduced by eighty percent;

25 (3) For fees payable under this subsection in the years 1998, 1999 and 2000, the fee shall
26 be reduced by sixty percent.

27 3. The fees imposed in subsection 2 of this section shall not be imposed or collected after
28 the year 2000 unless the general assembly reimposes the fee.

29 4. Each air contaminant source with a permit issued under sections 643.010 to 643.355
30 shall pay the fee for the first four thousand tons of each regulated air contaminant emitted each
31 year but no air contaminant source shall pay fees on total emissions of regulated air contaminants
32 in excess of twelve thousand tons in any calendar year. A permitted air contaminant source
33 which emitted less than one ton of all regulated pollutants shall pay a fee equal to the amount per
34 ton set by the commission. An air contaminant source which pays emission fees to a holder of
35 a certificate of authority issued pursuant to section 643.140 may deduct such fees from any
36 amount due under this section. The fees imposed in this section shall not be applied to carbon
37 oxide emissions. The fees imposed in subsection 1 and this subsection shall not be applied to
38 sulfur dioxide emissions from any Phase I affected unit subject to the requirements of Title IV,
39 Section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any sooner than
40 January 1, 2000. The fees imposed on emissions from Phase I affected units shall be consistent
41 with and shall not exceed the provisions of the federal Clean Air Act, as amended, and the
42 regulations promulgated thereunder. Any such fee on emissions from any Phase I affected unit
43 shall be reduced by the amount of the service fee paid by that Phase I affected unit pursuant to
44 subsection 8 of this section in that year. Any fees that may be imposed on Phase I sources shall
45 follow the procedures set forth in subsection 1 and this subsection and shall not be applied
46 retroactively.

47 5. Moneys collected under this section shall be transmitted to the director of revenue for
48 deposit in appropriate subaccounts of the natural resources protection fund created in section
49 640.220. A subaccount shall be maintained for fees paid by air contaminant sources which are
50 required to be permitted under Title V of the federal Clean Air Act, as amended, 42 U.S.C.
51 Section 7661, et seq., and used, upon appropriation, to fund activities by the department to
52 implement the operating permits program authorized by Title V of the federal Clean Air Act, as
53 amended. Another subaccount shall be maintained for fees paid by air contaminant sources
54 which are not required to be permitted under Title V of the federal Clean Air Act as amended,
55 and used, upon appropriation, to fund other air pollution control program activities. Another
56 subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase
57 I affected units which are subject to the requirements of Title IV, Section 404, of the federal
58 Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon appropriation,
59 to fund air pollution control program activities. The provisions of section 33.080 to the contrary
60 notwithstanding, moneys in the fund shall not revert to general revenue at the end of each
61 biennium. Interest earned by moneys in the subaccounts shall be retained in the subaccounts.
62 The per-ton fees established under subsection 1 of this section may be adjusted annually,
63 consistent with the need to fund the reasonable costs of the program, but shall not be less than
64 twenty-five dollars per ton of regulated air contaminant nor more than forty dollars per ton of
65 regulated air contaminant. The first adjustment shall apply to moneys payable on April 1, 1994,
66 and shall be based upon the general price level for the twelve-month period ending on August
67 thirty-first of the previous calendar year.

68 6. The department may initiate a civil action in circuit court against any air contaminant
69 source which has not remitted the appropriate fees within thirty days. In any judgment against
70 the source, the department shall be awarded interest at a rate [determined pursuant to] **set by**
71 section [408.030] **32.065 plus one percent** and reasonable attorney's fees. In any judgment
72 against the department, the source shall be awarded reasonable attorney's fees.

73 7. The department shall not suspend or revoke a permit for an air contaminant source
74 solely because the source has not submitted the fees pursuant to this section.

75 8. Any Phase I affected unit which is subject to the requirements of Title IV, Section
76 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall pay annually beginning
77 April 1, 1993, and terminating December 31, 1999, a service fee for the previous calendar year
78 as provided herein. For the first year, the service fee shall be twenty-five thousand dollars for
79 each Phase I affected generating unit to help fund the administration of sections 643.010 to
80 643.355. Thereafter, the service fee shall be annually set by the commission by rule, following
81 public hearing, based on an annual allocation prepared by the department showing the details of
82 all costs and expenses upon which such fees are based consistent with the department's

83 reasonable needs to administer and implement sections 643.010 to 643.355 and to fulfill its
84 responsibilities with respect to Phase I affected units, but such service fee shall not exceed
85 twenty-five thousand dollars per generating unit. Any such Phase I affected unit which is located
86 on one or more contiguous tracts of land with any Phase II generating unit that pays fees under
87 subsection 1 or subsection 2 of this section shall be exempt from paying service fees under this
88 subsection. A "contiguous tract of land" shall be defined to mean adjacent land, excluding public
89 roads, highways and railroads, which is under the control of or owned by the permit holder and
90 operated as a single enterprise.

91 9. The department of natural resources shall determine the fees due pursuant to this
92 section by the state of Missouri and its departments, agencies and institutions, including two- and
93 four-year institutions of higher education. The director of the department of natural resources
94 shall forward the various totals due to the joint committee on capital improvements and the
95 directors of the individual departments, agencies and institutions. The departments, as part of
96 the budget process, shall annually request by specific line item appropriation funds to pay said
97 fees and capital funding for projects determined to significantly improve air quality. If the
98 general assembly fails to appropriate funds for emissions fees as specifically requested, the
99 departments, agencies and institutions shall pay said fees from other sources of revenue or funds
100 available. The state of Missouri and its departments, agencies and institutions may receive
101 assistance from the small business technical assistance program established pursuant to section
102 643.173.

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