

HOUSE SUBSTITUTE
FOR
SENATE BILL NO. 496

1 AN ACT

2 To repeal sections 166.435, 364.030, 364.105,
3 365.030, 367.140, 367.509, 408.140, 408.233,
4 and 408.500, RSMo, and to enact in lieu
5 thereof twenty-one new sections relating to
6 financial transactions.

7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 166.435, 364.030, 364.105, 365.030,
10 367.140, 367.509, 408.140, 408.233, and 408.500, RSMo, are
11 repealed and twenty-one new sections enacted in lieu thereof, to
12 be known as sections 166.435, 166.500, 166.505, 166.510, 166.515,
13 166.520, 166.525, 166.530, 166.540, 166.545, 166.550, 166.555,
14 166.556, 364.030, 364.105, 365.030, 367.140, 367.509, 408.140,
15 408.233, and 408.500, to read as follows:

16 166.435. 1. Notwithstanding any law to the contrary, the
17 assets of the savings program held by the board and the assets of
18 any similar [savings program] programs sponsored, held, or
19 otherwise authorized by law by this state or any other state or
20 subdivision thereof and qualified pursuant to Section 529 of the
21 Internal Revenue Code and any income therefrom shall be exempt
22 from all taxation by the state or any of its political
23 subdivisions. Income earned or received from the fund [by any

1 participant or beneficiary shall not be subject to state] or any
2 similar program sponsored, held, or otherwise authorized by law
3 by this state or any other state or subdivision thereof and
4 qualified pursuant to Section 529 of the Internal Revenue Code by
5 any participant or beneficiary shall not be subject to state
6 income tax imposed pursuant to chapter 143, RSMo, and shall be
7 eligible for any benefits provided in accordance with Section 529
8 of the Internal Revenue Code. The exemption from taxation
9 pursuant to this section shall apply only to assets and income
10 maintained, accrued, or expended pursuant to the requirements of
11 the [savings program established pursuant to sections 166.400 to
12 166.455, the provisions of this section] programs sponsored,
13 held, or otherwise authorized by law by this state or any other
14 state or subdivision thereof and Section 529 of the Internal
15 Revenue Code, and no exemption shall apply to assets and income
16 expended for any other purposes. Annual contributions made to
17 the savings program held by the board and any similar program
18 sponsored, held, or otherwise authorized by law by this state up
19 to and including eight thousand dollars for the tax year
20 beginning on or after January 1, 2003, but before January 1,
21 2004, for the participant taxpayer, shall be subtracted in
22 determining Missouri adjusted gross income pursuant to section
23 143.121, RSMo. Annual contributions made to the savings program
24 held by the board and any similar program sponsored, held, or
25 otherwise authorized by law by this state or any other state or

1 subdivision thereof qualified pursuant to Section 529 of the
2 Internal Revenue Code, up to and including [eight] two thousand
3 dollars [made to the savings program] for the tax year beginning
4 on or after January 1, 2004, but before January 1, 2005, four
5 thousand dollars for the tax year beginning on or after January
6 1, 2005, but before January 1, 2006, six thousand dollars for the
7 tax year beginning on or after January 1, 2006, but before
8 January 1, 2007, eight thousand dollars for the tax year
9 beginning on or after January 1, 2007, but before January 1,
10 2008, and every tax year thereafter for the participant taxpayer,
11 shall be subtracted [from] in determining Missouri adjusted gross
12 income pursuant to section 143.121, RSMo.

13 2. If any deductible contributions to or earnings from any
14 [savings account] such program referred to in this section are
15 distributed and not used to pay qualified higher education
16 expenses or are not held for the minimum length of time
17 established by the [board] appropriate state or political
18 subdivision authority, the amount so distributed shall be added
19 to the Missouri adjusted gross income of the participant, or, if
20 the participant is not living, the beneficiary.

21 3. The provisions of this section shall apply to tax years
22 beginning on or after January 1, [1999] 2003.

23 166.500. Sections 166.500 to 166.556 shall be known and may
24 be cited as the "Missouri Higher Education Deposit Program".

25 166.505. Notwithstanding the provisions of sections 166.400

1 to 166.456 to the contrary, this program is established as a
2 nonexclusive alternative to the Missouri higher education savings
3 program and any participant may elect to participate in both
4 programs subject to aggregate Missouri program limitations.

5 166.510. As used in sections 166.500 to 166.556, except
6 where the context clearly requires another interpretation, the
7 following terms mean:

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

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

15 (3) "Board", the Missouri higher education deposit program
16 board established in section 166.515;

17 (4) "CAMELS rating", the Capital, Assets, Management,
18 Earnings, Liquidity, and Sensitivity rating system of the Federal
19 Financial Institution Examination Counsel (FFIEC);

20 (5) "Eligible educational institution", an institution of
21 postsecondary education as defined in Section 529(e)(5) of the
22 Internal Revenue Code;

23 (6) "Financial institution", a depository institution and
24 any intermediary that brokers certificates of deposits;

25 (7) "Internal Revenue Code", the Internal Revenue Code of

1 1986, as amended;

2 (8) "Missouri higher education deposit program" or "deposit
3 program", the program created pursuant to sections 166.500 to
4 166.556;

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

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

12 (11) "Qualified higher education expenses", the qualified
13 costs of tuition and fees and other expenses for attendance at an
14 eligible educational institution, as defined in Section 529(e)(3)
15 of the Internal Revenue Code, as amended.

16 166.515. 1. There is hereby created the "Missouri Higher
17 Education Deposit Program". The program shall be administered by
18 the Missouri higher education deposit program board which shall
19 consist of the director of the Missouri division of finance who
20 shall serve as chairman, the commissioner of the department of
21 higher education, the commissioner of the office of
22 administration, the commissioner of securities, and three private
23 members appointed by the governor with the advice and consent of
24 the senate who have demonstrable experience and knowledge in the
25 areas of deposit rate determination and placement of depository

1 certificates of deposit or other deposit investments. The three
2 private members shall be appointed to serve for terms of four
3 years from the date of appointment, with the exception of initial
4 private members. Initial members shall serve terms as follows:
5 one private member shall serve a two-year term; one private
6 member shall serve a three-year term; and one private member
7 shall serve a four-year term. Once the initial terms have been
8 completed, all such private members may be appointed to serve for
9 an additional four-year term. The members of the board shall be
10 subject to the conflict of interest provisions in section
11 105.452, RSMo. Any member who violates the conflict of interest
12 provisions shall be removed from the board.

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

16 (1) Develop and implement the Missouri higher education
17 deposit program and, notwithstanding any provision of sections
18 166.500 to 166.556 to the contrary, the deposit programs and
19 services consistent with the purposes and objectives of sections
20 166.500 to 166.556;

21 (2) Promulgate reasonable rules and regulations and
22 establish policies and procedures to implement sections 166.500
23 to 166.556, to permit the deposit program to qualify as a
24 qualified state tuition program pursuant to Section 529 of the
25 Internal Revenue Code and to ensure the deposit program's

1 compliance with all applicable laws;

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

9 (4) Enter into an agreement with any financial institution,
10 entity, or business clearinghouse for the operation of the
11 deposit program pursuant to sections 166.500 to 166.556;
12 providing however, that such institution, entity, or
13 clearinghouse shall be a private for-profit or not-for-profit
14 entity and not a government agency. No more than one board
15 member may have a direct interest in such institution, entity, or
16 clearinghouse. Such institution, entity, or clearinghouse shall
17 implement the board's policies and administer the program for the
18 board and with electing depository institutions and others;

19 (5) Enter into participation agreements with participants;

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

24 (7) Invest the funds received from participants in
25 appropriate investment instruments to be held by depository

1 institutions or directly deposit such funds in depository
2 institutions as provided by the board and elected by the
3 participants;

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

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

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

12 (11) Effectuate and carry out all the powers granted by
13 sections 166.500 to 166.556, and have all other powers necessary
14 to carry out and effectuate the purposes, objectives, and
15 provisions of sections 166.500 to 166.556 pertaining to the
16 deposit program;

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

21 (13) To both adopt and implement various methods of
22 transferring money by electronic means to efficiently transfer
23 funds to depository institutions for deposit, and in addition or
24 in the alternative, to allow funds to be transferred by agent
25 agreements, assignment, or otherwise, provided such transfer

1 occurs within two business days;

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

8 3. Four members of the board shall constitute a quorum. No
9 vacancy in the membership of the board shall impair the right of
10 a quorum to exercise all the rights and perform all the duties of
11 the board. No action shall be taken by the board except upon the
12 affirmative vote of a majority of the members present, except as
13 otherwise provided by law.

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

23 5. The funds shall be invested only in those investments
24 which a prudent person acting in a like capacity and familiar
25 with these matters would use in the conduct of an enterprise of a

1 like character and with like aims, as provided in section
2 105.688, RSMo, as a means to hold funds until they are placed in
3 a Missouri depository institution as a deposit. The board may
4 delegate to duly appointed representatives of financial
5 institutions authority to act in place of the board in the
6 investment and reinvestment of all or part of the moneys and may
7 also delegate to such representatives the authority to act in
8 place of the board in the holding, purchasing, selling,
9 assigning, transferring, or disposing of any or all of the
10 investments in which such moneys shall have been invested, as
11 well as the proceeds of such investments and such moneys,
12 however, such investments shall be limited to certificates of
13 deposit and other deposits in federally insured depository
14 institutions. Such representatives shall be registered as
15 "qualified student deposit advisors on section 529 plans" with
16 the board and such board shall, by rule, develop and administer
17 qualification tests from time to time to provide representatives
18 the opportunity to qualify for this program. In exercising or
19 delegating its investment powers and authority, members of the
20 board shall exercise ordinary business care and prudence under
21 the facts and circumstances prevailing at the time of the action
22 or decision. No member of the board shall be liable for any
23 action taken or omitted with respect to the exercise of, or
24 delegation of, these powers and authority if such member shall
25 have discharged the duties of his or her position in good faith

1 and with that degree of diligence, care, and skill which a
2 prudent person acting in a like capacity and familiar with these
3 matters would use in the conduct of an enterprise of a like
4 character and with like aims.

5 6. No board member or employee of the deposit program shall
6 personally receive any gain or profit from any funds or
7 transaction of the deposit program as a result of his or her
8 membership of the board. Any board member, employee, or agent of
9 the deposit program accepting any gratuity or compensation for
10 the purpose of influencing such board member's, employee's, or
11 agent's action with respect to choice of intermediary, including
12 any financial institution, entity or clearinghouse, for the funds
13 of the deposit program shall thereby forfeit the office and in
14 addition thereto be subject to the penalties prescribed for
15 bribery. However, a board member who is regularly employed
16 directly or indirectly by a financial institution may state that
17 institution's interest and absent himself from voting.

18 7. Depository institutions originating the deposit program
19 shall be the agent of the board and offer terms for certificates
20 of deposit and other deposits in such program as permitted by the
21 board, subject to a uniform interest rate disclosure as defined
22 in federal regulations of the Board of Governors of the Federal
23 Reserve System, specifically Federal Reserve Regulation DD, as
24 amended from time to time. The board shall establish various
25 deposit opportunities based on amounts deposited and length of

1 time held that are uniformly available to all depository
2 institutions that elect to participate in the program, and the
3 various categories of fixed or variable rates shall be the only
4 interest rates available under this program. A depository
5 institution that originates the deposit as agent for the board
6 and participates in the program shall receive back the
7 certificate of deposit or other deposit, provided such depository
8 institution has a CAMELS rating of 1 or 2, or, a comparable
9 regulatory rating that is the substantial equivalent of the
10 CAMELS rating. Such deposit and certificate of deposit shall be
11 titled in the name of the clearing entity for the benefit of the
12 participant, and shall be insured as permitted by any agency of
13 the federal government that insures deposits in depository
14 institutions. Any depository institution or intermediary that
15 fails to comply with these provisions shall forfeit its right to
16 participate in this program; provided however, the board shall be
17 the sole and exclusive judge of compliance except as otherwise
18 provided by provisions in Section 529 of the Internal Revenue
19 Code and the Internal Revenue Service enforcement of such
20 section.

21 166.520. 1. The board may enter into deposit program
22 participation agreements with participants on behalf of
23 beneficiaries pursuant to the provisions of sections 166.500 to
24 166.556, including the following terms and conditions:

25 (1) A participation agreement shall stipulate the terms and

1 conditions of the deposit program in which the participant makes
2 contributions;

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

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

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

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

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

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

1 beneficiary.

2 3. The board shall establish a total contribution limit for
3 deposit accounts established under the deposit program with
4 respect to a beneficiary to permit the deposit program to qualify
5 as a qualified state tuition program pursuant to Section 529 of
6 the Internal Revenue Code. No contribution may be made to a
7 deposit account for a beneficiary if it would cause the balance
8 of all deposit accounts of the beneficiary to exceed the total
9 contribution limit established by the board. The board may
10 establish other requirements that it deems appropriate to provide
11 adequate safeguards to prevent contributions on behalf of a
12 beneficiary from exceeding what is necessary to provide for the
13 qualified higher education expenses of the beneficiary.

14 4. The board shall establish the minimum length of time
15 that contributions and earnings must be held by the deposit
16 program to qualify pursuant to section 166.435. Any
17 contributions or earnings that are withdrawn or distributed from
18 a deposit account prior to the expiration of the minimum length
19 of time, as established by the board, shall be subject to a
20 penalty pursuant to section 166.530.

21 166.525. All money paid by a participant in connection with
22 participation agreements shall be deposited as received and shall
23 be promptly invested by the board or may be directly deposited by
24 the board's agents. Contributions and earnings thereon
25 accumulated on behalf of participants in the deposit program may

1 be used, as provided in the participation agreement, for
2 qualified higher education expenses.

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

7 (1) Used exclusively for qualified higher education
8 expenses of the designated beneficiary;

9 (2) Made because of death or disability of the designated
10 beneficiary;

11 (3) Made because of the receipt of scholarship by the
12 designated beneficiary;

13 (4) A rollover distribution, as defined in Section
14 529(c)(3)(C)(i) of the Internal Revenue Code; or

15 (5) Held in the fund for the minimum length of time
16 established by the board.

17 166.540. The assets of the deposit program shall at all
18 times be preserved, invested, and expended only for the purposes
19 set forth in this section and in accordance with the
20 participation agreements, and no property rights therein shall
21 exist in favor of the state.

22 166.545. Any rule or portion of a rule, as that term is
23 defined in section 536.010, RSMo, that is promulgated pursuant to
24 sections 166.500 to 166.556 shall become effective only if it has
25 been promulgated pursuant to the provisions of chapter 536, RSMo.

1 All rulemaking authority delegated prior to August 28, 2003, is
2 of no force and effect and repealed; however, nothing in this
3 section shall be interpreted to repeal or affect the validity of
4 any rule filed or adopted prior to August 28, 2003, if it fully
5 complied with the provisions of chapter 536, RSMo. Sections
6 166.500 to 166.556 and chapter 536, RSMo, are nonseverable and if
7 any of the powers vested with the general assembly pursuant to
8 chapter 536, RSMo, to review, to delay the effective date, or to
9 disapprove and annul a rule are subsequently held
10 unconstitutional, then the grant of rulemaking authority and any
11 rule proposed or adopted after August 28, 2003, shall be invalid
12 and void.

13 166.550. The Missouri state auditor shall, on a semiannual
14 basis, review the financial status and investment policy of the
15 program as well as the participation rate in the program. The
16 auditor shall also review the continued viability of the program
17 and the administration of the program by the board. The auditor
18 shall report the findings annually to the board, which shall
19 subsequently disclose such findings at a public meeting.

20 166.555. Money accruing to and deposited in individual
21 deposit accounts shall not be part of total state revenues as
22 defined in sections 17 and 18 of article X of the Constitution of
23 the state of Missouri and the expenditure of such revenues shall
24 not be an expense of state government under section 20 of article
25 X of the Constitution of the state of Missouri.

1 166.556. All personally identifiable information concerning
2 participants and beneficiaries of accounts established within the
3 Missouri higher education deposit program pursuant to sections
4 166.500 to 166.556 shall be confidential, and any disclosure of
5 such information shall be restricted to purposes directly
6 connected with the administration of the program.

7 364.030. 1. No person shall engage in the business of a
8 financing institution in this state without a license therefor as
9 provided in this chapter; except, however, that no bank, trust
10 company, loan and investment company, licensed sales finance
11 company, registrant under the provisions of sections 367.100 to
12 367.200, RSMo, or person who makes only occasional purchases of
13 retail time contracts or accounts under retail charge agreements
14 and which purchases are not being made in the course of repeated
15 or successive purchase of retail installment contracts from the
16 same seller, shall be required to obtain a license under this
17 chapter but shall comply with all the laws of this state
18 applicable to the conduct and operation of a financing
19 institution.

20 2. The application for the license shall be in writing,
21 under oath and in the form prescribed by the director. The
22 application shall contain the name of the applicant; date of
23 incorporation, if incorporated; the address where the business is
24 or is to be conducted and similar information as to any branch
25 office of the applicant; the name and resident address of the

1 owner or partners or, if a corporation or association, of the
2 directors, trustees and principal officers, and other pertinent
3 information as the director may require.

4 3. The license fee for each calendar year or part thereof
5 shall be the sum of three hundred dollars for each place of
6 business of the licensee in this state which shall be paid into
7 the general revenue fund. The director may establish a biennial
8 licensing arrangement but in no case shall the fees be payable
9 for more than one year at a time.

10 4. Each license shall specify the location of the office or
11 branch and must be conspicuously displayed therein. In case the
12 location is changed, the director shall either endorse the change
13 of location of the license or mail the licensee a certificate to
14 that effect, without charge.

15 5. Upon the filing of an application, and the payment of
16 the fee, the director shall issue a license to the applicant to
17 engage in the business of a financing institution under and in
18 accordance with the provisions of this chapter for a period which
19 shall expire the last day of December next following the date of
20 its issuance. The license shall not be transferable or
21 assignable. No licensee shall transact any business provided for
22 by this chapter under any other name.

23 364.105. 1. No person shall engage in the business of a
24 premium finance company in this state without first registering
25 as a premium finance company with the director.

1 2. The annual registration fee shall be three hundred
2 dollars payable to the director as of the first day of July of
3 each year. The director may establish a biennial licensing
4 arrangement but in no case shall the fees be payable for more
5 than one year at a time.

6 3. Registration shall be made on forms prepared by the
7 director and shall contain the following information:

8 (1) Name, business address and telephone number of the
9 premium finance company;

10 (2) Name and business address of corporate officers and
11 directors or principals or partners;

12 (3) A sworn statement by an appropriate officer, principal
13 or partner of the premium finance company that:

14 (a) The premium finance company is financially capable to
15 engage in the business of insurance premium financing; and

16 (b) If a corporation, that the corporation is authorized to
17 transact business in this state;

18 (4) If any material change occurs in the information
19 contained in the registration form, a revised statement shall be
20 submitted to the director accompanied by an additional fee of one
21 hundred dollars.

22 365.030. 1. No person shall engage in the business of a
23 sales finance company in this state without a license as provided
24 in this chapter; except, that no bank, trust company, savings and
25 loan association, loan and investment company or registrant under

1 the provisions of sections 367.100 to 367.200, RSMo, authorized
2 to do business in this state is required to obtain a license
3 under this chapter but shall comply with all of the other
4 provisions of this chapter.

5 2. The application for the license shall be in writing,
6 under oath and in the form prescribed by the director. The
7 application shall contain the name of the applicant; date of
8 incorporation, if incorporated; the address where the business is
9 or is to be conducted and similar information as to any branch
10 office of the applicant; the name and resident address of the
11 owner or partners or, if a corporation or association, of the
12 directors, trustees and principal officers, and such other
13 pertinent information as the director may require.

14 3. The license fee for each calendar year or part thereof
15 shall be the sum of three hundred dollars for each place of
16 business of the licensee in this state. The director may
17 establish a biennial licensing arrangement but in no case shall
18 the fees be payable for more than one year at a time.

19 4. Each license shall specify the location of the office or
20 branch and must be conspicuously displayed there. In case the
21 location is changed, the director shall either endorse the change
22 of location on the license or mail the licensee a certificate to
23 that effect, without charge.

24 5. Upon the filing of the application, and the payment of
25 the fee, the director shall issue a license to the applicant to

1 engage in the business of a sales finance company under and in
2 accordance with the provisions of this chapter for a period which
3 shall expire the last day of December next following the date of
4 its issuance. The license shall not be transferable or
5 assignable. No licensee shall transact any business provided for
6 by this chapter under any other name.

7 367.140. 1. Every lender shall, at the time of filing
8 application for certificate of registration as provided in
9 section 367.120 hereof, pay the sum of three hundred dollars as
10 an annual registration fee for the period ending the thirtieth
11 day of June next following the date of payment and in full
12 payment of all expenses for investigations, examinations and for
13 the administration of sections 367.100 to 367.200, except as
14 provided in section 367.160, and thereafter a like fee shall be
15 paid on or before June thirtieth of each year; provided, that if
16 a lender is supervised by the commissioner of finance under any
17 other law, the charges for examination and supervision required
18 to be paid under said law shall be in lieu of the annual fee for
19 registration and examination required under this section. The
20 fee shall be made payable to the director of revenue. If the
21 initial registration fee for any certificate of registration is
22 for a period of less than twelve months, the registration fee
23 shall be prorated according to the number of months that said
24 period shall run. The director may establish a biennial
25 licensing arrangement but in no case shall the fees be payable

1 for more than one year at a time.

2 2. Upon receipt of such fee and application for
3 registration, and provided the bond, if required by the director,
4 has been filed, the director shall issue to the lender a
5 certificate containing the lender's name and address and reciting
6 that such lender is duly and properly registered to conduct the
7 supervised business. The lender shall keep this certificate of
8 registration posted in a conspicuous place at the place of
9 business recited in the registration certificate. Where the
10 lender engages in the supervised business at or from more than
11 one office or place of business, such lender shall obtain a
12 separate certificate of registration for each such office or
13 place of business.

14 3. Certificates of registration shall not be assignable or
15 transferable except that the lender named in any such certificate
16 may obtain a change of address of the place of business therein
17 set forth. Each certificate of registration shall remain in full
18 force and effect until surrendered, revoked, or suspended as
19 herein provided.

20 367.509. 1. A title loan license applicant must have and
21 maintain capital of at least seventy-five thousand dollars at all
22 times.

23 2. The license application shall be in writing, under oath
24 and in the form prescribed by the director. The application
25 shall contain the name of the applicant, date of formation if a

1 business entity, the address of each title loan office operated
2 or sought to be operated, the name and residential address of the
3 owner, partners, directors, trustees and principal officers, and
4 such other pertinent information as the director may require. A
5 corporate surety bond in the principal sum of twenty thousand
6 dollars per location shall accompany each license application.
7 The bond shall be in a form satisfactory to the director and
8 shall be issued by a bonding company or insurance company
9 authorized to do business in this state in order to ensure the
10 faithful performance of the obligations of the applicant and the
11 applicant's agents and subagents in connection with title loan
12 activities. An applicant or licensee may, in lieu of filing any
13 bond required pursuant to this section, provide the director with
14 an irrevocable letter of credit as defined in section 400.5-103,
15 RSMo, in the amount of twenty thousand dollars per location,
16 issued by any bank, trust company, savings and loan or credit
17 union operating in Missouri in a form acceptable to the director.

18 3. Every person applying for a title loan license shall pay
19 one thousand dollars as an investigation fee. Applicants for
20 additional title lending licenses shall pay one thousand dollars
21 per additional location as an investigation fee. The lender
22 shall, beginning with the first license renewal, pay annually to
23 the director a fee of one thousand dollars for each licensed
24 location.

25 4. Each license shall specify the location of the title

1 loan office and shall be conspicuously displayed therein. Before
2 any title lending office may relocate, the director shall approve
3 such relocation by mailing the licensee a new license to that
4 effect, without charge.

5 5. Upon the filing of the application, and the payment of
6 the fee, by a person eligible to apply for a title loan license,
7 the director shall issue a license to engage in the title loan
8 business in accordance with sections 367.500 to 367.533. The
9 licensing year shall commence on January first and end the
10 following December thirty-first. The director may establish a
11 biennial licensing arrangement but in no case shall the fees be
12 payable for more than one year at a time. Each license shall be
13 uniquely numbered and shall not be transferable or assignable.
14 [Renewal licenses shall be effective for a period of one year.]

15 408.140. 1. No further or other charge or amount
16 whatsoever shall be directly or indirectly charged, contracted
17 for or received for interest, service charges or other fees as an
18 incident to any such extension of credit except as provided and
19 regulated by sections 367.100 to 367.200, RSMo, and except:

20 (1) On loans for thirty days or longer which are other than
21 "open-end credit" as such term is defined in the federal Consumer
22 Credit Protection Act and regulations thereunder, a fee, not to
23 exceed five percent of the principal amount loaned not to exceed
24 seventy-five dollars may be charged by the lender; however, no
25 such fee shall be permitted on any extension, refinance,

1 restructure or renewal of any such loan, unless any investigation
2 is made on the application to extend, refinance, restructure or
3 renew the loan;

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

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

21 (4) If the contract so provides, a charge for late payment
22 for a single payment note in default for a period of not less
23 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
25 note shall not exceed fifty dollars;

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

10 (6) Charges assessed by any institution for processing a
11 refused instrument plus a handling fee of not more than [fifteen]
12 twenty-five dollars;

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

21 (8) Provided the debtor agrees in writing, the lender may
22 collect a fee in advance for allowing the debtor to defer up to
23 three monthly loan payments, so long as the fee is no more than
24 the lesser of fifty dollars or ten percent of the loan payments
25 deferred, no extensions are made until the first loan payment is

1 collected and no more than one deferral in a twelve-month period
2 is agreed to and collected on any one loan; this subdivision
3 applies to nonprecomputed loans only and does not affect any
4 other subdivision;

5 (9) If the open-end credit contract is tied to a
6 transaction account in a depository institution, such account is
7 in the institution's assets and such contract provides for loans
8 of thirty-one days or longer which are "open-end credit", as such
9 term is defined in the federal Consumer Credit Protection Act and
10 regulations thereunder, the creditor may charge a credit advance
11 fee of the lesser of twenty-five dollars or five percent of the
12 credit advanced from time to time from the line of credit; such
13 credit advance fee may be added to the open-end credit
14 outstanding along with any interest, and shall not be considered
15 the unlawful compounding of interest as that term is defined in
16 section 408.120.

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

25 3. Notwithstanding any other provision of law to the

1 contrary, in addition to charges allowed pursuant to section
2 408.100, an open-end credit contract provided by a company,
3 financial institution, savings and loan or other credit issuing
4 company which is regulated pursuant to this chapter may charge an
5 annual fee not to exceed fifty dollars.

6 408.233. 1. No charge other than that permitted by section
7 408.232 shall be directly or indirectly charged, contracted for
8 or received in connection with any second mortgage loan, except
9 as provided in this section:

10 (1) Fees and charges prescribed by law actually and
11 necessarily paid to public officials for perfecting, releasing,
12 or satisfying a security interest related to the second mortgage
13 loan;

14 (2) Taxes;

15 (3) Bona fide closing costs paid to third parties, which
16 shall include:

17 (a) Fees or premiums for title examination, title
18 insurance, or similar purposes including survey;

19 (b) Fees for preparation of a deed, settlement statement,
20 or other documents;

21 (c) Fees for notarizing deeds and other documents;

22 (d) Appraisal fees; and

23 (e) Fees for credit reports;

24 (4) Charges for insurance as described in subsection 2 of
25 this section;

1 (5) A nonrefundable origination fee not to exceed five
2 percent of the principal which may be used by the lender to
3 reduce the rate on a second mortgage loan;

4 (6) Any amounts paid to the lender by any person,
5 corporation or entity, other than the borrower, to reduce the
6 rate on a second mortgage loan or to assist the borrower in
7 qualifying for the loan;

8 (7) For revolving loans, an annual fee not to exceed fifty
9 dollars may be assessed.

10 2. An additional charge may be made for insurance written
11 in connection with the loan, including insurance protecting the
12 lender against the borrower's default or other credit loss, and:

13 (1) For insurance against loss of or damage to property
14 where no such coverage already exists; and

15 (2) For insurance providing life, accident, health or
16 involuntary unemployment coverage.

17 3. The cost of any insurance shall not exceed the rates
18 filed with the division of insurance, and the insurance shall be
19 obtained from an insurance company duly authorized to conduct
20 business in this state. Any person or entity making second
21 mortgage loans, or any of its employees, may be licensed to sell
22 insurance permitted in this section.

23 4. On any second mortgage loan, a default charge may be
24 contracted for and received for any installment or minimum
25 payment not paid in full within fifteen days of its scheduled due

1 date equal to five percent of the amount or [~~twenty-five~~] fifteen
2 dollars, whichever is [~~less~~] greater. A default charge may be
3 collected only once on an installment or a payment due however
4 long it remains in default. A default charge may be collected at
5 the time it accrues or at any time thereafter and for purposes of
6 subsection 3 of section 408.234 a default charge shall be treated
7 as a payment. No default charge may be collected on an
8 installment or a payment due which is paid in full within fifteen
9 days of its scheduled due date even though an earlier installment
10 or payment or a default charge on earlier installment or payments
11 may not have been paid in full.

12 5. The lender shall, in addition to the charge authorized
13 by subsection 4 of this section, be allowed to assess the
14 borrower or other maker of refused instrument the actual charge
15 made by any institution for processing the negotiable instrument,
16 plus a handling fee of not more than [~~fifteen~~] twenty-five
17 dollars; and, if the contract or promissory note, signed by the
18 borrower, provides for attorney fees, and if it is necessary to
19 bring suit, such attorney fees may not exceed fifteen percent of
20 the amount due and payable under such contract or promissory
21 note, together with any court costs assessed. The attorney fees
22 shall only be applicable where the contract or promissory note is
23 referred for collection to an attorney, and are not handled by a
24 salaried employee of the holder of the contract or note.

25 408.500. 1. Lenders, other than banks, trust companies,

1 credit unions, savings banks and savings and loan companies, in
2 the business of making unsecured loans of five hundred dollars or
3 less shall obtain a license from the director of the division of
4 finance. An annual license fee of three hundred dollars per
5 location shall be required. The license year shall commence on
6 January first each year and the license fee may be prorated for
7 expired months. The director may establish a biennial licensing
8 arrangement but in no case shall the fees be payable for more
9 than one year at a time. The provisions of this section shall
10 not apply to pawnbroker loans, consumer credit loans as
11 authorized under chapter 367, RSMo, nor to a check accepted and
12 deposited or cashed by the payee business on the same or the
13 following business day. The disclosures required by the federal
14 Truth in Lending Act and regulation Z shall be provided on any
15 loan, renewal or extension made pursuant to this section and the
16 loan, renewal or extension documents shall be signed by the
17 borrower.

18 2. Entities making loans pursuant to this section shall
19 contract for and receive simple interest and fees in accordance
20 with sections 408.100 and 408.140. Any contract evidencing any
21 fee or charge of any kind whatsoever, except for bona fide
22 clerical errors, in violation of this section shall be void. Any
23 person, firm or corporation who receives or imposes a fee or
24 charge in violation of this section shall be guilty of a class A
25 misdemeanor.

1 borrower shall reduce the principal amount of the loan by not
2 less than five percent of the original amount of the loan until
3 such loan is paid in full. However, no loan may be renewed more
4 than six times.

5 7. When making or negotiating loans, a licensee shall
6 consider the financial ability of the borrower to reasonably
7 repay the loan in the time and manner specified in the loan
8 contract. All records shall be retained at least two years.

9 8. A licensee who ceases business pursuant to this section
10 must notify the director to request an examination of all records
11 within ten business days prior to cessation. All records must be
12 retained at least two years.

13 9. Any lender licensed pursuant to this section who fails,
14 refuses or neglects to comply with the provisions of this
15 section, or any laws relating to consumer loans or commits any
16 criminal act may have its license suspended or revoked by the
17 director of finance after a hearing before the director on an
18 order of the director to show cause why such order of suspension
19 or revocation should not be entered specifying the grounds
20 therefor which shall be served on the licensee at least ten days
21 prior to the hearing.

22 10. Whenever it shall appear to the director that any
23 lender licensed pursuant to this section is failing, refusing or
24 neglecting to make a good faith effort to comply with the
25 provisions of this section, or any laws relating to consumer

1 loans, the director may issue an order to cease and desist which
2 order may be enforceable by a civil penalty of not more than one
3 thousand dollars per day for each day that the neglect, failure
4 or refusal shall continue. The penalty shall be assessed and
5 collected by the director. In determining the amount of the
6 penalty, the director shall take into account the appropriateness
7 of the penalty with respect to the gravity of the violation, the
8 history of previous violations, and such other matters as justice
9 may require.