

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1400

AN ACT

To repeal sections 67.085, 361.070, 361.080, 400.9-311, and 408.052, RSMo, and to enact in lieu thereof five new sections relating to financial transactions, with existing penalty provisions and an emergency clause.

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

1 Section A. Sections 67.085, 361.070, 361.080, 400.9-311,
2 and 408.052, RSMo, are repealed and five new sections enacted in
3 lieu thereof, to be known as sections 67.085, 361.070, 361.080,
4 400.9-311, and 408.052, to read as follows:

5 67.085. Notwithstanding any law to the contrary, any
6 political subdivision of the state and any other public entity in
7 Missouri may invest funds of the public entity not immediately
8 needed for the purpose to which such funds or any of them may be
9 applicable provided each public entity meets the requirements for
10 separate deposit insurance of public funds permitted by federal
11 deposit insurance and in accordance with the following
12 conditions:

13 (1) The public funds are invested through a financial

1 institution which has been selected as a depository of the funds
2 in accordance with the applicable provisions of the statutes of
3 Missouri relating to the selection of depositories and such
4 financial institution enters into a written agreement with the
5 public entity;

6 (2) The selected financial institution arranges for the
7 deposit of the public funds in [certificates of] deposit accounts
8 in one or more financial institutions wherever located in the
9 United States, for the account of the public entity;

10 (3) Each such [certificate of] deposit [issued by financial
11 institutions as provided in subdivision (2) of this section]
12 account is insured by federal deposit insurance for one hundred
13 percent of the principal and accrued interest of the [certificate
14 of] deposit;

15 (4) The selected financial institution acts as custodian
16 for the public entity with respect to [the certificate of] such
17 deposit [issued for its account] accounts; and

18 (5) [At the same time] On the same date that the public
19 funds are deposited [and the certificates of deposit are issued]
20 under subdivision (2) of this section, the selected financial
21 institution receives an amount of deposits from customers of
22 other financial institutions equal to the amount of the public
23 funds initially invested by the public entity through the
24 selected financial institution.

25 361.070. 1. The director of finance and all employees of
26 the division of finance, which term shall, for purposes of this
27 section and section 361.080, include special agents, shall,
28 before entering upon the discharge of their duties, take the oath

1 of office prescribed by the constitution, and, in addition, take
2 an oath that they will not reveal the conditions or affairs of
3 any financial institution or any facts pertaining to the same,
4 that may come to their knowledge by virtue of their official
5 positions, unless required by law to do so in the discharge of
6 the duties of their offices or when testifying in any court
7 proceeding. For purposes of this section and section 361.080,
8 "financial institution" shall mean any entity subject to
9 chartering, licensing, or regulation by the division of finance.

10 2. The director of finance and all employees of the
11 division of finance shall further execute to the state of
12 Missouri good and sufficient bonds with corporate surety, to be
13 approved by the governor and attorney general, conditioned that
14 they will faithfully and impartially discharge the duties of
15 their offices, and pay over to the persons entitled by law to
16 receive it, all money coming into their hands by virtue of their
17 offices. The principal amount of bond applicable to each
18 employee shall be determined by the state banking and savings and
19 loan board. The bond, after approval by the governor and
20 attorney general, shall be filed with the secretary of state for
21 safekeeping. The bond premiums, not to exceed one percent on the
22 amount thereof, shall be paid out of the state treasury in the
23 same manner as other expenses of the division.

24 3. Neither the director of finance nor any employees of the
25 division of finance who participate in the examination of any
26 bank or trust company, or who may be called upon to make any
27 official decision or determination affecting the operation of any
28 bank or trust company, other than the members of the state

1 banking and savings and loan board who are required to have
2 experience managing a bank or association as defined in chapter
3 369, shall be an officer, director, attorney, owner, or holder of
4 stock in any bank or trust company or any bank holding company as
5 that term is defined in section 362.910, nor shall they receive,
6 directly or indirectly, any payment or gratuity from any such
7 organization, nor engage in the negotiation of loans for others
8 with any state bank or trust company, nor be indebted to any
9 state bank or trust company.

10 4. The director of the division of finance shall establish
11 an internal policy to ensure the professional conduct of
12 employees of the division of finance who participate in the
13 examination of any person or entity under the jurisdiction of the
14 director of the division of finance, or who may be called upon to
15 make any official decision or determination affecting the
16 operation of any person or entity under the jurisdiction of the
17 director of the division of finance. The policy shall address
18 such matters deemed appropriate by the director of the division
19 of finance, including, but not limited to, procedures to address
20 and mitigate the conflict of interest presented by offers of
21 employment or negotiations regarding employment between an
22 employee of the division and any person or entity under the
23 jurisdiction of the director of the division of finance.

24 5. The director of finance, in connection with any
25 examination or investigation of any person, company, or event,
26 shall have the authority to compel the production of documents,
27 in whatever form they may exist, and shall have the authority to
28 compel the attendance of and administer oaths to any person

1 having knowledge of any issue involved with the examination or
2 investigation. The director may seek judicial enforcement of an
3 administrative subpoena by application to the appropriate court.
4 An administrative subpoena shall be subject to the same defenses
5 or subject to a protective order or conditions as provided and
6 deemed appropriate by the court in accordance with the Missouri
7 Supreme Court Rules.

8 361.080. 1. To ensure the integrity of the examination
9 process, the director of finance and all employees of the
10 division of finance shall be bound under oath to keep secret all
11 facts and information obtained in the course of all examinations
12 and investigations [except] subject only to the exceptions set
13 out below. When disclosure is necessary or required under this
14 subsection, the director may set conditions and limitations
15 including an agreement of confidentiality or seek a judicial
16 protective order under subsection 2 of this section. The
17 exceptions allowing disclosure are as follows:

18 (1) To the extent that the public duty of the director
19 requires the director to report information to another government
20 official or agency or take administrative or judicial enforcement
21 action regarding the affairs of a financial institution;

22 (2) When called as a witness in a court proceeding relating
23 to such financial institution's safety and soundness or in any
24 criminal proceeding;

25 (3) When reporting on the condition of the financial
26 institution to the officers and directors of the financial
27 institution or to a holding company which owns the financial
28 institution;

1 (4) When reporting findings to a complainant, provided the
2 disclosure is limited to such complainant's account information;

3 (5) When exchanging information with any agency which
4 regulates financial institutions under federal law or the laws of
5 any state when the director of finance determines that the
6 sharing of information is necessary for the proper performance by
7 the director of finance and the other agencies, that such
8 information will remain confidential as though subject to section
9 361.070 and this section and that said agencies routinely share
10 information with the division of finance;

11 (6) When authorized by the financial institution's board of
12 directors to provide the information to anyone else; or

13 (7) [When disclosure is necessary or required, the director
14 may set conditions and limitations, including an agreement of
15 confidentiality or a judicial or administrative protective
16 order.] When undergoing a state audit, provided that the director
17 of finance has entered an agreement of confidentiality with the
18 state auditor. The agreement of confidentiality shall include
19 provisions for the redaction of records to remove protected
20 information from disclosure. The redaction of information shall
21 be required when it is comprised of nonpublic personal or
22 proprietary commercial and financial information, trade secrets,
23 information the disclosure of which could prejudice the effective
24 performance or security of the division of finance including
25 component CAMELS ratings or other sensitive findings, or
26 information that is protected under any recognized privilege,
27 such as attorney client privilege or work product. Protected
28 information shall also be identifying bank information including

1 anything that could be matched with public information to discern
2 the identity of a financial institution under the jurisdiction of
3 the division of finance or of individual persons or business
4 entities served by such financial institutions. When
5 confidential or protected information relating to a particular
6 financial institution under the division's jurisdiction is
7 requested, the director of the division of finance shall provide
8 notice to that institution at least thirty days prior to
9 production, and shall provide the institution a copy of the
10 proposed agreement of confidentiality. The affected institution
11 may submit comments to the director regarding the agreement or
12 the production and may seek review of the decision to produce the
13 information or of the confidentiality agreement, or both, under
14 the provisions of section 536.150. The director of the division
15 of finance may forego the notice to a financial institution under
16 this subsection when the notice would compromise an investigation
17 by any agency with criminal prosecutorial powers.

18 2. In all other circumstances, facts and information
19 obtained by the director of finance and the employees of the
20 division of finance through examinations or investigations shall
21 be held in confidence absent a court's finding of compelling
22 reasons for disclosure. Such finding shall demonstrate that the
23 need for the information sought outweighs the public interest in
24 free and open communications during the examination or
25 investigation process. To assure a meaningful hearing, any
26 financial institution that is not already a party to the judicial
27 proceeding and whose information is the subject of a records
28 request or subpoena shall be joined or notified and permitted to

1 intervene in the hearing and to participate regarding the
2 production request or subpoena. In no event shall a financial
3 institution, or any officer, director, or employee thereof, be
4 charged with libel, slander, or defamation for any good faith
5 communications with the director of finance or any employees of
6 the division of finance.

7 3. If the director or any employees of the division of
8 finance disclose the name of any debtor of any financial
9 institution or disclose any facts obtained in the course of any
10 examination or investigation of any financial institution, except
11 as herein provided, the disclosing party shall be deemed guilty
12 of a misdemeanor and upon conviction shall be subject to
13 forfeiture of office and the payment of a fine not to exceed one
14 thousand dollars.

15 400.9-311. (a) Except as otherwise provided in subsection
16 (d), the filing of a financing statement is not necessary or
17 effective to perfect a security interest in property subject to:

18 (1) A statute, regulation, or treaty of the United States
19 whose requirements for a security interest's obtaining priority
20 over the rights of a lien creditor with respect to the property
21 preempt section 400.9-310(a);

22 (2) Sections 301.600 to 301.661, section 700.350, and
23 section 400.2A-304; or

24 (3) A certificate-of-title statute of another jurisdiction
25 which provides for a security interest to be indicated on the
26 certificate as a condition or result of the security interest's
27 obtaining priority over the rights of a lien creditor with
28 respect to the property.

1 (b) Compliance with the requirements of a statute,
2 regulation, or treaty described in subsection (a) for obtaining
3 priority over the rights of a lien creditor is equivalent to the
4 filing of a financing statement under this article. Except as
5 otherwise provided in subsection (d) and sections 400.9-313 and
6 400.9-316(d) and (e) for goods covered by a certificate of title,
7 a security interest in property subject to a statute, regulation,
8 or treaty described in subsection (a) may be perfected only by
9 compliance with those requirements, and a security interest so
10 perfected remains perfected notwithstanding a change in the use
11 or transfer of possession of the collateral.

12 (c) Except as otherwise provided in subsection (d) and
13 section 400.9-316(d) and (e), duration and renewal of perfection
14 of a security interest perfected by compliance with the
15 requirements prescribed by a statute, regulation, or treaty
16 described in subsection (a) are governed by the statute,
17 regulation, or treaty. In other respects, the security interest
18 is subject to this article.

19 (d) During any period in which collateral is inventory held
20 for sale or lease by a person or leased by that person as lessor
21 and that person is in the business of selling [or leasing] goods
22 of that kind, this section does not apply to a security interest
23 in that collateral created by that person [as debtor].

24 408.052. 1. No lender shall charge, require or receive, on
25 any residential real estate loan, any points or other fees of any
26 nature whatsoever, excepting insurance, including insurance for
27 involuntary unemployment coverage, and a one-percent origination
28 fee, whether from the buyer or the seller or any other person,

1 except that the lender may charge bona fide expenses paid by the
2 lender to any other person or entity except to an officer,
3 employee, or director of the lender or to any business in which
4 any officer, employee or director of the lender owns any
5 substantial interest for services actually performed in
6 connection with a loan. In addition to the foregoing, if the
7 loan is for the construction, repair, or improvement of
8 residential real estate, the lender may charge a fee not to
9 exceed one percent of the loan amount for inspection and
10 disbursement of the proceeds of the loan to third parties.
11 Notwithstanding the foregoing, the parties may contract for a
12 default charge for any installment not paid in full within
13 fifteen days of its scheduled due date. The restrictions of this
14 section shall not apply:

15 (1) To any loan which is insured or covered by guarantee
16 made by any department, board, bureau, commission, agency or
17 establishment of the United States, pursuant to the authority of
18 any act of Congress heretofore or hereafter adopted; and ____

19 (2) To any loan for which an offer or commitment or
20 agreement to purchase has been received from and which is made
21 with the intention of reselling such loan to the Federal Housing
22 Administration, Farmers Home Administration, Federal National
23 Mortgage Association, Government National Mortgage Association,
24 Federal Home Loan Mortgage Corporation, or to any successor to
25 the above-mentioned organizations, to any other state or federal
26 governmental or quasi-governmental organization; [and]

27 (3) To any mortgage broker making loans on manufactured
28 homes or modular units; and

1 (4) Provided that the 1994 reenactment of this section
2 shall not be construed to be action taken in accordance with
3 Public Law 96-221, Section 501(b)(4). Any points or fees
4 received in excess of those permitted under this section shall be
5 returned to the person from whom received upon demand.

6 2. Notwithstanding the language in subsection 1 of this
7 section, a lender may pay to an officer, employee or director of
8 the lender, or to any business in which such person has an
9 interest, bona fide fees for services actually and necessarily
10 performed in good faith in connection with a residential real
11 estate loan, provided:

12 (1) Such services are individually listed by amount and
13 payee on the loan-closing documents; and

14 (2) Such lender may use the preemption of Public Law
15 96-221, Section 501 with respect to the residential real estate
16 loan in question. When fees charged need not be disclosed in the
17 annual percentage rate required by Title 15, U.S.C. Sections
18 1601, et seq., and regulations thereunder because such fees are
19 de minimis amounts or for other reasons, such fees need not be
20 included in the annual percentage rate for state examination
21 purposes.

22 3. The lender may charge and collect bona fide fees for
23 services actually and necessarily performed in good faith in
24 connection with a residential real estate loan as provided in
25 subsection 2 of this section; however, the lender's board of
26 directors shall determine whether such bona fide fees shall be
27 paid to the lender or businesses related to the lender in
28 subsection 2 of this section, but may allow current contractual

1 relationships to continue for up to two years.

2 4. If any points or fees are charged, required or received,
3 which are in excess of those permitted by this section, or which
4 are not returned upon demand when required by this section, then
5 the person paying the same points or fees or his or her legal
6 representative may recover twice the amount paid together with
7 costs of the suit and reasonable attorney's fees, provided that
8 the action is brought within five years of such payment.

9 5. Any lender who knowingly violates the provisions of this
10 section is guilty of a class B misdemeanor.

11 Section B. In order to promote financial transactions and
12 protect confidentiality in auditing such transactions, section A
13 of this act is deemed necessary for the immediate preservation of
14 the public health, welfare, peace and safety, and is hereby
15 declared to be an emergency act within the meaning of the
16 constitution, and section A of this act shall be in full force
17 and effect upon its passage and approval.