

SECOND REGULAR SESSION

# HOUSE BILL NO. 1975

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CUNNINGHAM (145).

Read 1st time March 8, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5224L.02I

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### AN ACT

To repeal sections 361.711, 361.715, 362.275, 362.445, and 408.555, RSMo, and to enact in lieu thereof five new sections relating to financial institutions.

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

Section A. Sections 361.711, 361.715, 362.275, 362.445, and 408.555, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 361.711, 361.715,  
3 362.275, 362.445, and 408.555, to read as follows:

361.711. Each application for a license shall be accompanied by a corporate surety bond  
2 in the principal sum of [twenty-five] **one hundred** thousand dollars. The bond shall be in form  
3 satisfactory to the director and shall be issued by a bonding company or insurance company  
4 authorized to do business in this state, to secure the faithful performance of the obligations of  
5 the applicant and the agents and subagents of the applicant with respect to the receipt,  
6 transmission, and payment of money in connection with the sale or issuance of checks **and also**  
7 **to pay the costs incurred by the division to remedy any breach of the obligations of the**  
8 **applicant subject to the bond or to pay examination costs of the division owed and not paid**  
9 **by the applicant. Upon license renewal, the required amount of bond shall be as follows:**  
10 (1) **For all licensees selling payment instruments or stored value cards, five times**  
11 **the high outstanding balance from the previous year with a minimum of one hundred**  
12 **thousand dollars and a maximum of one million dollars;**

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.

13           (2) For all licensees receiving money for transmission, five times the greatest  
14 amount transmitted in a single day during the previous year with a minimum of one  
15 hundred thousand dollars and a maximum of one million dollars.

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17 If in the opinion of the director the bond shall at any time appear to be inadequate, insecure,  
18 exhausted, or otherwise doubtful, additional bond in form and with surety satisfactory to the  
19 director shall be filed within fifteen days after notice of the requirement is given to the licensee  
20 by the director. An applicant or licensee may, in lieu of filing any bond required under this  
21 section, provide the director with an irrevocable letter of credit, as defined in section 400.5-103,  
22 RSMo, issued by any state or federal financial institution. **Whenever in the director's**  
23 **judgment it is necessary or expedient, the director may perform a special examination of**  
24 **any person licensed under sections 361.700 to 361.727 with all authority under section**  
25 **361.160 as though the licensee were a bank. The cost of such examination shall be paid by**  
26 **the licensee.**

          361.715. 1. Upon the filing of the application, the filing of a certified audit, the  
2 [payments] **payment** of the investigation fee and the approval by the director of the necessary  
3 bond, the director **shall cause, investigate, and determine whether the character,**  
4 **responsibility, and general fitness of the principals of the applicant or any affiliates are**  
5 **such as to command confidence and warrant belief that the business of the applicant will**  
6 **be conducted honestly and efficiently and that the applicant is in compliance with all other**  
7 **applicable state and federal laws. If satisfied, the director** shall issue to the applicant a  
8 license pursuant to the provisions of sections 361.700 to 361.727. **In processing a renewal**  
9 **license, the director shall require the same information and follow the same procedures**  
10 **described in this subsection.**

11           2. Each licensee shall pay to the director [within five days after] **before** the issuance of  
12 the license, and annually thereafter on or before April fifteenth of each year, a license fee of one  
13 hundred dollars.

14           **3. The director may assess a reasonable charge, not to exceed one hundred dollars,**  
15 **for any application to amend and reissue an existing license.**

          362.275. 1. The board of directors of every bank and trust company organized or doing  
2 business pursuant to this chapter shall hold a regular meeting at least once each month, or, upon  
3 application to and acceptance by the director of finance, at such other times, not less frequently  
4 than once each calendar quarter as the director of finance shall approve, which approval may be  
5 rescinded at any time. There shall be submitted to the meeting a list giving the aggregate of  
6 loans, discounts, acceptances and advances, including overdrafts, to each individual, partnership,  
7 corporation or person whose liability to the bank or trust company has been created, extended,

8 renewed or increased since the cut-off date prior to the regular meeting by more than an amount  
9 to be determined by the board of directors, which minimum amount shall not exceed five percent  
10 of the bank's legal loan limit, except the minimum amount shall in no case be less than ten  
11 thousand dollars[, and]; a second list of the aggregate indebtedness of each borrower whose  
12 aggregate indebtedness exceeds five times such minimum amount, except the aggregate  
13 indebtedness shall in no case be less than fifty thousand dollars; [and] a third list showing all  
14 paper past due thirty days or more **or alternatively, the third list shall report the total past**  
15 **due ratio for loans thirty days or more past due, nonaccrual loans divided by total loans,**  
16 **and a listing of past due loans in excess of the minimum amount to be determined by the**  
17 **board of directors, which minimum amount shall not exceed five percent of the bank's legal**  
18 **loan limit, except the minimum amount shall in no case be less than ten thousand dollars;**  
19 and a fourth list showing the aggregate of the then existing indebtedness and liability to the bank  
20 or trust company of each of the directors, officers, and employees thereof. The information  
21 called for in the second, third, and fourth lists shall be submitted as of the date of the regular  
22 meeting or as of a reasonable date prior thereto. [If there is collateral to the indebtedness, it shall  
23 be described as of the date of the lists.] No bills payable shall be made, and no bills shall be  
24 rediscounted by the bank or trust company except with the consent or ratification of the board  
25 of directors; provided, however, that if the bank or trust company is a member of the federal  
26 reserve system, rediscounts may be made to it by the officers in accordance with its rules, a list  
27 of all rediscounts to be submitted to the next regular meeting of the board. The director of  
28 finance may require, by order, that the board of directors of a bank or trust company approve or  
29 disapprove every purchase or sale of securities and every discount, loan, acceptance, renewal or  
30 other advance including every overdraft over an amount to be specified in the director's order and  
31 may also require that the board of directors review, at each monthly meeting, a list of the  
32 aggregate indebtedness of each borrower whose aggregate indebtedness exceeds an amount to  
33 be specified in the director's order. The minutes of the meeting shall indicate the compliance  
34 with the requirements of this section. Furthermore, the debtor's identity on the information  
35 required in this subsection may be masked by code to conceal the actual debtor's identity only  
36 for information mailed to or otherwise provided directors who are not physically present at the  
37 board meeting. The code used shall be revealed to all directors at the beginning of each board  
38 meeting for which this procedure is used.

39       2. For any issue in need of immediate action, the board of directors or the executive  
40 committee of the board as defined in section 362.253 may enter into a unanimous consent  
41 agreement as permitted by subsection 2 of section 351.340, RSMo. Such consent may be  
42 communicated by facsimile transmission or by other authenticated record, separately by each  
43 director, provided each consent is signed by the director and the bank has no indication such

44 signature is not the director's valid consent. When the bank or trust company has received  
45 unanimous consent from the board or executive committee, the action voted on shall be  
46 considered approved.

362.445. 1. **The term "process", when used in this section, shall include any writ,  
2 summons, petition, or order whereby any suit, action, or proceeding shall be commenced.**

3 **2. Any state or federally chartered bank, trust company, or thrift institution may**  
4 **be served with process according to the Missouri Rules of Civil Procedure describing**  
5 **service of process for corporations.**

6 **3. Any state or federally chartered bank, trust company, or thrift institution may**  
7 **appoint a Missouri service agent and register the appointment with the director of finance**  
8 **who will maintain a record of all such appointments for public reference.**

9 **4. Whenever pursuant to [any provision] express provisions** of this chapter, the director  
10 shall have been duly appointed attorney to receive service of process for any foreign corporation  
11 **or out-of-state bank or trust company, he or she** shall forthwith forward by mail, postage  
12 prepaid, a copy of every process served upon him **or her** directed to the president or secretary  
13 of such corporation, at its last known post-office address.

14 **[2.] 5. For each copy of process the director of revenue shall collect the sum of [two] ten**  
15 **dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be**  
16 **recovered by [him] the plaintiff as part of [his] the plaintiff's taxable disbursement if he or she**  
17 **succeeds in his or her suit or proceeding.**

18 **[3. The term "process", when used in this section, shall include any writ, summons,**  
19 **petition or order whereby any suit, action or proceeding shall be commenced.]**

408.555. 1. Except as provided in subsection 2 of this section, after a default consisting  
2 only of the borrower's failure to make a required payment, a lender, because of that default, may  
3 neither accelerate maturity of the unpaid balance nor take possession of or otherwise enforce a  
4 security interest until twenty days after a notice of the borrower's right to cure is given both to  
5 the borrower and to all cosigners on the credit transaction nor, with respect to an insurance  
6 premium loan, give notice of cancellation until thirteen days after a notice of the borrower's right  
7 to cure is given; notice shall not be given prior to default. Until expiration of the minimum  
8 applicable period after the notice is given, the borrower or cosigner may cure all defaults  
9 consisting of a failure to make the required payment by tendering the amount of all unpaid sums  
10 due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral  
11 charges. Cure restores the borrower to his rights as though the default had not occurred.

12 **2. This section does not prohibit a borrower from voluntarily surrendering possession**  
13 **of property which is collateral and the lender from thereafter accelerating maturity of the loan**  
14 **and enforcing the note or loan and his security interest in the property at any time after default.**

15 If the lender has not already given the notice described in subsection 2 or 3 of section 408.554,  
16 he shall upon voluntary surrender of the collateral notify the borrower either personally or by  
17 mail at the borrower's last known address that he may owe additional money after the money  
18 received from the sale of the collateral is deducted from the total amount owed.

19 3. No lender is bound by the provisions of subsection 1 of this section if default by the  
20 same borrower in connection with the same credit transaction with the same lender has occurred  
21 twice notwithstanding the cure of such defaults **or three times in the case of a second mortgage**  
22 **loan** except as provided in subsection 4 of this section.

23 4. Default by a borrower on a second mortgage loan may be cured by tendering the  
24 current obligation of the borrower at any time prior to the completion of the judicial or  
25 extrajudicial proceedings for foreclosure upon such real estate. For the purposes of this section,  
26 "current obligation of the debtor" means the aggregate of all installments scheduled to be due at  
27 the time of the tender, **late charges otherwise permitted by law, and expenses of foreclosures**  
28 **actually incurred by the lender for initiating a bona fide foreclosure**, notwithstanding any  
29 contractual provision for the acceleration of installment payments. A lender may take no steps  
30 to enforce a security interest in real property pursuant to a second mortgage loan until thirty days  
31 after notice of the borrower's right to cure is given; notice shall not be given prior to default.  
32 Cure restores the borrower's rights under the agreement as though the default had not occurred,  
33 [and any foreclosure in violation of this section is a class B misdemeanor] **except that only**  
34 **three defaults are permitted**. This section shall not affect the debtor's right otherwise to  
35 redeem such real property under any other provision of law.

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