

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 835

102ND GENERAL ASSEMBLY

3810S.04C

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 95.280, 95.285, 95.355, 408.035, 408.140, and 442.210, RSMo, and to enact in lieu thereof four new sections relating to financial institutions.

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

Section A. Sections 95.280, 95.285, 95.355, 408.035,
2 408.140, and 442.210, RSMo, are repealed and four new sections
3 enacted in lieu thereof, to be known as sections 110.075,
4 408.035, 408.140, and 442.210, to read as follows:

**110.075. 1. As used in this section, the following
2 terms shall mean:**

3 (1) "Depository", banking institution headquartered in
4 or maintaining a full-service branch in this state which is
5 selected by a municipality to hold and manage public funds;

6 (2) "Governing body", any city council, board of
7 aldermen, or board of trustees;

8 (3) "Municipal depositories", any state-chartered or
9 federally chartered banking institution as defined in
10 Article IV, Section 15 of the Constitution of Missouri;

11 (4) "Municipality", any city or village in this state;

12 (5) "Public funds", funds owned or controlled by a
13 municipality, including tax revenues, fees, grants, and
14 other sources of income.

15 2. All municipalities shall select depositories
16 through a competitive process in accordance with the

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 provisions in this section. The governing body of each
18 municipality shall develop and publish a request for
19 proposals which shall outline the requirements for selecting
20 one or more municipal depositories. Such requirements shall
21 address or include the following matters:

22 (1) The municipality shall use due diligence for
23 determining the financial stability and soundness of the
24 depository based on publicly available financial reports and
25 other public sources;

26 (2) Safe custody and liquidity of public funds,
27 including deposit insurance coverage and pledge of
28 collateral or investment in appropriate government
29 securities as authorized for public funds;

30 (3) Interest rates and fees offered;

31 (4) Services offered, including online banking, cash
32 management, deposit sweep and repurchase accounts,
33 investment in a common trust fund in eligible securities for
34 municipalities and political subdivisions, and other banking
35 service options;

36 (5) Compliance with all applicable state and federal
37 banking regulations;

38 (6) Convenient and efficient treasury functions,
39 including if the location of the depository institution
40 shall be required to be located within the municipality or
41 in the same county as the municipality.

42 3. Banking institutions interested in becoming the
43 municipal depository shall respond to the municipality's
44 request for proposals within the time frame specified by the
45 municipality in the request.

46 4. The governing body shall evaluate the proposals
47 based on the criteria outlined in the request for proposals

48 and select a banking institution that best meets the
49 municipality's needs and objectives.

50 5. The selected banking institution shall enter into a
51 contract with the municipality outlining the terms and
52 conditions of the depository relationship, including, but
53 not limited to, the interest rates, fees, and services to be
54 provided.

55 6. Municipalities shall maintain records of the
56 selection process, including all proposals received by the
57 municipality for a period of two years.

408.035. Notwithstanding the provisions of any other
2 law to the contrary, it is lawful for the parties to agree
3 in writing to any rate of interest, fees, and other terms
4 and conditions in connection with any:

5 (1) Loan to a corporation, general partnership,
6 limited partnership or limited liability company;

7 (2) Extension of credit primarily for agricultural,
8 business, or commercial purposes;

9 (3) Real estate loan, other than residential real
10 estate loans [and loans of less than five thousand dollars
11 secured by real estate used for an agricultural activity]; or

12 (4) Loan of five thousand dollars or more secured
13 solely by certificates of stock, bonds, bills of exchange,
14 certificates of deposit, warehouse receipts, or bills of
15 lading pledged as collateral for the repayment of such loans.

408.140. 1. No further or other charge or amount
2 whatsoever shall be directly or indirectly charged,
3 contracted for or received for interest, service charges or
4 other fees as an incident to any such extension of credit
5 except as provided and regulated by sections 367.100 to
6 367.200 and except:

7 (1) On loans for thirty days or longer which are other
8 than "open-end credit" as such term is defined in the
9 federal Consumer Credit Protection Act and regulations
10 thereunder, a fee, not to exceed ten percent of the
11 principal amount loaned not to exceed one hundred dollars
12 may be charged by the lender; however, no such fee shall be
13 permitted on any extension, refinance, restructure or
14 renewal of any such loan, unless any investigation is made
15 on the application to extend, refinance, restructure or
16 renew the loan;

17 (2) The lawful fees actually and necessarily paid out
18 by the lender to any public officer for filing, recording,
19 or releasing in any public office any instrument securing
20 the loan, and reasonable and bona fide third-party fees
21 incurred for remote or electronic filing, which fees may be
22 collected when the loan is made or at any time thereafter;
23 however, premiums for insurance in lieu of perfecting a
24 security interest required by the lender may be charged if
25 the premium does not exceed the fees which would otherwise
26 be payable;

27 (3) If the contract so provides, a charge for late
28 payment on each installment or minimum payment in default
29 for a period of not less than fifteen days in an amount not
30 to exceed five percent of each installment due or the
31 minimum payment due or fifteen dollars, whichever is
32 greater, not to exceed fifty dollars. If the contract so
33 provides, a charge for late payment on each twenty-five
34 dollars or less installment in default for a period of not
35 less than fifteen days shall not exceed five dollars;

36 (4) If the contract so provides, a charge for late
37 payment for a single payment note in default for a period of
38 not less than fifteen days in an amount not to exceed five

39 percent of the payment due; provided that, the late charge
40 for a single payment note shall not exceed fifty dollars;

41 (5) Charges or premiums for insurance written in
42 connection with any loan against loss of or damage to
43 property or against liability arising out of ownership or
44 use of property as provided in section 367.170; however,
45 notwithstanding any other provision of law, with the consent
46 of the borrower, such insurance may cover property all or
47 part of which is pledged as security for the loan, and
48 charges or premiums for insurance providing life, health,
49 accident, or involuntary unemployment coverage;

50 (6) Reasonable towing costs and expenses of retaking,
51 holding, preparing for sale, and selling any personal
52 property in accordance with the uniform commercial code -
53 secured transactions, sections 400.9-101 to 400.9-809;

54 (7) A reasonable service fee not to exceed the amount
55 permitted under subdivision (2) of subsection 6 of section
56 570.120 for any check, draft, order, or like instrument that
57 is returned unpaid by a financial institution, plus an
58 amount equal to the actual fees charged by the financial
59 institution for each check, draft, order, or like instrument
60 returned unpaid;

61 (8) If the contract or promissory note, signed by the
62 borrower, provides for attorney fees, and if it is necessary
63 to bring suit, such attorney fees may not exceed fifteen
64 percent of the amount due and payable under such contract or
65 promissory note, together with any court costs assessed.
66 The attorney fees shall only be applicable where the
67 contract or promissory note is referred for collection to an
68 attorney, and is not handled by a salaried employee of the
69 holder of the contract;

70 (9) If the open-end credit contract is tied to a
71 transaction account in a depository institution, such
72 account is in the institution's assets and such contract
73 provides for loans of thirty-one days or longer which are
74 "open-end credit", as such term is defined in the federal
75 Consumer Credit Protection Act and regulations thereunder,
76 the creditor may charge a credit advance fee of up to the
77 lesser of seventy-five dollars or ten percent of the credit
78 advanced from time to time from the line of credit; such
79 credit advance fee may be added to the open-end credit
80 outstanding along with any interest, and shall not be
81 considered the unlawful compounding of interest as specified
82 under section 408.120;

83 (10) A deficiency waiver addendum, guaranteed asset
84 protection, or a similar product purchased as part of a loan
85 transaction with collateral and at the borrower's consent,
86 provided the cost of the product is disclosed in the loan
87 contract, is reasonable, and the requirements of section
88 408.380 are met;

89 (11) A convenience fee for payments using an
90 alternative payment channel that accepts a debit or credit
91 card not present transaction, nonface-to-face payment,
92 provided that:

93 (a) The person making the payment is notified of the
94 convenience fee; and

95 (b) The fee is fixed or flat, except that the fee may
96 vary based upon method of payment used;

97 **(12) A charge equal to the cost of the credit report.**

98 2. Other provisions of law to the contrary
99 notwithstanding, an open-end credit contract under which a
100 credit card is issued by a company, financial institution,
101 savings and loan or other credit issuing company whose

102 credit card operations are located in Missouri may charge an
103 annual fee, provided that no finance charge shall be
104 assessed on new purchases other than cash advances if such
105 purchases are paid for within twenty-five days of the date
106 of the periodic statement therefor.

107 3. Notwithstanding any other provision of law to the
108 contrary, in addition to charges allowed pursuant to section
109 408.100, an open-end credit contract provided by a company,
110 financial institution, savings and loan or other credit
111 issuing company which is regulated pursuant to this chapter
112 may charge an annual fee not to exceed fifty dollars.

442.210. 1. The certificate of acknowledgment shall
2 state the act of acknowledgment, and that the person making
3 the same was personally known to at least one judge of the
4 court, or to the officer granting the certificate, to be the
5 person whose name is subscribed to the instrument as a party
6 thereto, or was proved to be such by at least two witnesses,
7 whose names and places of residence shall be inserted in the
8 certificate; and the following forms of acknowledgment may
9 be used in the case of conveyances or other written
10 instruments affecting real estate; and any acknowledgment so
11 taken and certificate shall be sufficient to satisfy all
12 requirements of law relating to the execution or recording
13 of such instruments (begin in all cases by a caption,
14 specifying the state and place where the acknowledgment is
15 taken):

16 (1) In case of natural persons acting in their own
17 right

18 On this _____ day of _____, 20_____,
19 before me personally appeared A B (or A B and C
20 D), to me known to be the person (or persons)
21 described in and who executed the foregoing

22 instrument, and acknowledged that he (or they)
23 executed the same as his (or their) free act and
24 deed.

25 (2) In the case of natural persons acting by attorney

26 On this _____ day of _____, 20_____,
27 before me personally appeared A B, to me known
28 to be the person who executed the foregoing
29 instrument in behalf of C D, and acknowledged
30 that he executed the same as the free act and
31 deed of C D.

32 (3) In the case of corporations or joint stock
33 associations

34 On this _____ day of _____, 20_____,
35 before me appeared A B, to me personally known,
36 who, being by me duly sworn (or affirmed) did
37 say that he is the president (or other officer
38 or agent of the corporation or association), of
39 (describing the corporation or association), and
40 that the seal affixed to foregoing instrument is
41 the corporate seal of said corporation (or
42 association), and that said instrument was
43 signed and sealed in behalf of said corporation
44 (or association) by authority of its board of
45 directors (or trustees), and said A B
46 acknowledged said instrument to be the free act
47 and deed of said corporation (or association).

48 2. In case the corporation or association has no
49 corporate seal, omit the words "the seal affixed to said
50 instrument is the corporate seal of said corporation (or
51 association), and that", and add at the end of the affidavit
52 clause the words "and that said corporation (or association)
53 has no corporate seal".

54 3. (In all cases add signature and title of the
55 officer taking the acknowledgment.)

56 [4. When a married woman unites with her husband in
57 the execution of any such instrument, and acknowledges the
58 same in one of the forms above sanctioned, she shall be
59 described in the acknowledgment as his wife, but in all
60 other respects her acknowledgment shall be taken and
61 certified as if she were sole; and no separate examination
62 of a married woman in respect to the execution of any
63 release or dower, or other instrument affecting real estate,
64 shall be required.]

 [95.280. 1. Subject to the provisions of
2 section 110.030, the city council, at its
3 regular meetings in July of each year, may
4 receive sealed proposals for the deposit of the
5 city funds from banking institutions doing
6 business within the city that desire to be
7 selected as the depository of the funds of the
8 city. Notice that bids will be received shall
9 be published by the city clerk not less than one
10 nor more than four weeks before the meeting, in
11 some newspaper published in the city. Any
12 banking institution doing business in the city,
13 desiring to bid, shall deliver to the city
14 clerk, on or before the day of the meeting, a
15 sealed proposal stating the rate percent upon
16 daily balances that the banking institution
17 offers to pay to the city for the privilege of
18 being the depository of the funds of the city
19 for the year next ensuing the date of the
20 meeting; or, in the event that the selection is
21 made for a less term than one year, as herein
22 provided, then for the time between the date of
23 the bid and the next regular time for the
24 selection of a depository. It is a misdemeanor
25 for the city clerk or other person to disclose
26 directly or indirectly the amount of any bid to
27 any person before the selection of the
28 depository.]

29 2. Notwithstanding the provisions of
30 subsection 1 of this section to the contrary,
31 the city council of any third class city with a
32 population of more than fifteen thousand and
33 less than nineteen thousand that is located in
34 any county of the fourth classification with a
35 population of more than forty thousand and less
36 than forty-eight thousand three hundred, or of
37 any city of the third classification with more
38 than ten thousand five hundred but less than ten
39 thousand six hundred inhabitants may receive
40 sealed proposals for the deposit of city funds
41 from banking institutions doing business within
42 the city at any of the regular meetings of such
43 city. The city shall send notice of bids to
44 each banking institution in the city by regular
45 mail at the time the notice is published in the
46 newspaper in subsection 1 of this section. The
47 banking institution selected as the depository
48 shall be offered a depository contract for a
49 maximum of two years. Any such city shall
50 follow the bid procedure established in
51 subsection 1 of this section, except as
52 otherwise provided in this subsection.]

[95.285. 1. Except as provided in
2 subsection 2 of this section, upon the opening
3 of the sealed proposals submitted, the city
4 council shall select as the depository of the
5 funds of the city the banking institution
6 offering to pay to the city the largest amount
7 for the privilege; except that the council may
8 reject any or all bids. Within five days after
9 the selection of the depository, the banking
10 institution selected shall deposit the
11 securities as required by sections 110.010 and
12 110.020. The rights and duties of the parties
13 to the depository contract are as provided in
14 section 110.010.

15 2. Notwithstanding any provision of
16 section 95.280 or this section to the contrary,
17 the contract term for any city of the third
18 classification with more than ten thousand five
19 hundred but less than ten thousand six hundred

20 inhabitants shall begin on the first day of
21 August following the receipt of the bid
22 proposals.]

[95.355. Boards of aldermen in cities of
2 the fourth class, at their first regular
3 meetings in the months of January, April, July
4 and October of each year, may select a
5 depository for the funds of their respective
6 cities, for the length of time and under the
7 rules and regulations that are provided and
8 prescribed by ordinance therefor. The rights
9 and duties of the parties to the depository
10 contract are as provided in section 110.010.
11 The deposits shall be secured by deposit of
12 securities as required by sections 110.010 and
13 110.020. The depository shall be a banking
14 institution doing business within the city. If
15 such depository cannot be selected, or such
16 satisfactory arrangements made, the boards of
17 aldermen may invest the moneys upon the terms
18 and under the conditions provided by law for the
19 loaning of county and school moneys.]

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