

SECOND REGULAR SESSION

SENATE BILL NO. 890

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time March 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

6104S.011

AN ACT

To repeal sections 361.070 and 361.080, RSMo, and to enact in lieu thereof two new sections relating to division of finance examinations, with existing penalty provisions.

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

Section A. Sections 361.070 and 361.080, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 361.070 and 361.080, to
3 read as follows:

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

11 2. The director of finance and all employees of the division of finance shall
12 further execute to the state of Missouri good and sufficient bonds with corporate
13 surety, to be approved by the governor and attorney general, conditioned that
14 they will faithfully and impartially discharge the duties of their offices, and pay
15 over to the persons entitled by law to receive it, all money coming into their
16 hands by virtue of their offices. The principal amount of bond applicable to each
17 employee shall be determined by the state banking and savings and loan

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

18 board. The bond, after approval by the governor and attorney general, shall be
19 filed with the secretary of state for safekeeping. The bond premiums, not to
20 exceed one percent on the amount thereof, shall be paid out of the state treasury
21 in the same manner as other expenses of the division.

22 3. Neither the director of finance nor any employees of the division of
23 finance who participate in the examination of any bank or trust company, or who
24 may be called upon to make any official decision or determination affecting the
25 operation of any bank or trust company, other than the members of the state
26 banking and savings and loan board who are required to have experience
27 managing a bank or association as defined in chapter 369, shall be an officer,
28 director, attorney, owner, or holder of stock in any bank or trust company or any
29 bank holding company as that term is defined in section 362.910, nor shall they
30 receive, directly or indirectly, any payment or gratuity from any such
31 organization, nor engage in the negotiation of loans for others with any state
32 bank or trust company, nor be indebted to any state bank or trust company.

33 4. **The director of the division of finance shall establish an**
34 **internal policy to ensure the professional conduct of employees of the**
35 **division of finance who participate in the examination of any person or**
36 **entity under the jurisdiction of the director of the division of finance,**
37 **or who may be called upon to make any official decision or**
38 **determination affecting the operation of any person or entity under the**
39 **jurisdiction of the director of the division of finance. The policy shall**
40 **address such matters deemed appropriate by the director of the**
41 **division of finance, including, but not limited to, procedures to address**
42 **and mitigate the conflict of interest presented by offers of employment**
43 **or negotiations regarding employment between an employee of the**
44 **division and any person or entity under the jurisdiction of the director**
45 **of the division of finance.**

46 5. The director of finance, in connection with any examination or
47 investigation of any person, company, or event, shall have the authority to compel
48 the production of documents, in whatever form they may exist, and shall have the
49 authority to compel the attendance of and administer oaths to any person having
50 knowledge of any issue involved with the examination or investigation. The
51 director may seek judicial enforcement of an administrative subpoena by
52 application to the appropriate court. An administrative subpoena shall be subject
53 to the same defenses or subject to a protective order or conditions as provided and

54 deemed appropriate by the court in accordance with the Missouri Supreme Court
55 Rules.

361.080. 1. To ensure the integrity of the examination process, the
2 director of finance and all employees of the division of finance shall be bound
3 under oath to keep secret all facts and information obtained in the course of all
4 examinations and investigations [except] **subject only to the exceptions set**
5 **out below. When disclosure is necessary or required under this**
6 **subsection, the director may set conditions and limitations including**
7 **an agreement of confidentiality or seek a judicial protective order**
8 **under subsection 2 of this section. The exceptions allowing disclosure**
9 **include, but are not limited to, the following:**

10 (1) To the extent that the public duty of the director requires the director
11 to report information to another government official or agency or take
12 administrative or judicial enforcement action regarding the affairs of a financial
13 institution;

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

16 (3) When reporting on the condition of the financial institution to the
17 officers and directors of the financial institution or to a holding company which
18 owns the financial institution;

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

21 (5) When exchanging information with any agency which regulates
22 financial institutions under federal law or the laws of any state when the director
23 of finance determines that the sharing of information is necessary for the proper
24 performance by the director of finance and the other agencies, that such
25 information will remain confidential as though subject to section 361.070 and this
26 section and that said agencies routinely share information with the division of
27 finance;

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

30 (7) [When disclosure is necessary or required, the director may set
31 conditions and limitations, including an agreement of confidentiality or a judicial
32 or administrative protective order.] **When undergoing a state audit,**
33 **provided, that the director of finance has entered an agreement of**
34 **confidentiality with the state auditor. The agreement of confidentiality**

35 shall include provisions for the redaction of records to remove
36 protected information from disclosure. The redaction of information
37 shall be required when it is comprised of nonpublic personal or
38 proprietary commercial and financial information, trade secrets,
39 information the disclosure of which could prejudice the effective
40 performance or security of the division of finance including component
41 CAMELS ratings or other sensitive findings, or information that is
42 protected under any recognized privilege, such as attorney client
43 privilege or work product. Protected information shall also be
44 identifying bank information including anything that could be matched
45 with public information to discern the identity of a financial institution
46 under the jurisdiction of the division of finance or of individual
47 persons or business entities served by such financial institutions. When
48 confidential or protected information relating to a particular financial
49 institution under the division's jurisdiction is requested, the director
50 of the division of finance shall provide notice to that institution at least
51 thirty days prior to production, and shall provide the institution a copy
52 of the proposed agreement of confidentiality. The affected institution
53 may submit comments to the director regarding the agreement or the
54 production and may seek review of the decision to produce the
55 information or of the confidentiality agreement, or both, under the
56 provisions of section 536.150. The director of the division of finance
57 may forego the notice to a financial institution under this subsection
58 when the notice would compromise an investigation by any agency with
59 criminal prosecutorial powers.

60 2. In all other circumstances, facts and information obtained by the
61 director of finance and the employees of the division of finance through
62 examinations or investigations shall be held in confidence absent a court's finding
63 of compelling reasons for disclosure. Such finding shall demonstrate that the
64 need for the information sought outweighs the public interest in free and open
65 communications during the examination or investigation process. To assure a
66 meaningful hearing, any financial institution that is not already a party to the
67 judicial proceeding and whose information is the subject of a records request or
68 subpoena shall be joined or notified and permitted to intervene in the hearing
69 and to participate regarding the production request or subpoena. In no event
70 shall a financial institution, or any officer, director, or employee thereof, be
71 charged with libel, slander, or defamation for any good faith communications with

72 the director of finance or any employees of the division of finance.

73 3. If the director or any employees of the division of finance disclose the
74 name of any debtor of any financial institution or disclose any facts obtained in
75 the course of any examination or investigation of any financial institution, except
76 as herein provided, the disclosing party shall be deemed guilty of a misdemeanor
77 and upon conviction shall be subject to forfeiture of office and the payment of a
78 fine not to exceed one thousand dollars.

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