

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 777

95TH GENERAL ASSEMBLY

2010

3576L.06T

AN ACT

To repeal sections 339.503, 362.111, 375.1152, 375.1155, 375.1255, 408.052, 408.140, 408.233, and 408.300, RSMo, and to enact in lieu thereof twelve new sections relating to the sale of certain financial products and plans associated with certain loan transactions, with penalty provisions for a certain section.

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

Section A. Sections 339.503, 362.111, 375.1152, 375.1155, 375.1255, 408.052, 408.140, 408.233, and 408.300, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 339.503, 362.111, 375.539, 375.1152, 375.1155, 375.1191, 375.1255, 408.052, 408.140, 408.233, 408.300, and 408.380, to read as follows:

339.503. As used in sections 339.500 to 339.549, the following words and phrases mean, unless the context clearly indicates otherwise:

(1) "Appraisal" or "real estate appraisal", an objective analysis, evaluation, opinion, or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis;

(2) "Appraisal assignment", an engagement for which a person is employed or retained to act as a disinterested third party in rendering an objective appraisal;

(3) "Appraisal foundation", the organization of the same name that was incorporated as an Illinois not-for-profit corporation on November 20, 1987, whose operative boards are the appraisal standards board and the appraiser qualifications board;

(4) "Appraisal report", any communication, written or oral, of an

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

14 appraisal. The purpose of an appraisal is immaterial, therefore valuation reports, real
15 estate counseling reports, real estate tax counseling reports, real estate offering
16 memoranda, mortgage banking offers, highest and best use studies, market demand
17 and economic feasibility studies and all other reports communicating an appraisal
18 analysis, opinion or conclusion are appraisal reports, regardless of title;

19 (5) "Appraisal standards board (ASB)", the independent board of the appraisal
20 foundation which promulgates the generally accepted standards of the appraisal
21 profession and the uniform standards of professional appraisal practices;

22 (6) "Appraiser qualifications board (AQB)", the independent board of the
23 appraisal foundation which establishes minimum experience, education and
24 examination criteria for state licensing of appraisers;

25 (7) "Boat dock", a structure for loading and unloading boats and connecting
26 real property to water, public or private. A boat dock is real property and has
27 riparian rights, provided:

28 (a) The lender includes the boat dock as a fixture both in the lender's deed of
29 trust and a uniform commercial code fixture filing under section 400.9-502, RSMo;

30 (b) The boat dock is attached to the real property by steel cable, bar, or chain
31 that is permanently imbedded in concrete or rock, and otherwise securely attached to
32 the dock; and

33 (c) The owner of the dock has riparian rights by means of real estate rights
34 bordering the body of water, including such rights by license, grant, or other means
35 allowing access to the body of water, which access may be seasonal because the water
36 may be reduced for electric power production or flood control;

37 **(8) "Boat slip or watercraft slip", a defined area of water, including**
38 **the riparian rights to use such area, whether by grant, lease, or license, in**
39 **accordance with all applicable laws and regulations, which is a part of a boat**
40 **dock serving a common interest community, including by way of example**
41 **and not of limitation, condominiums and villas; and the exclusive right to**
42 **such use being allocated as a limited common element or being assigned to**
43 **an owner of real estate in the common interest community in which the**
44 **boat dock is located, whether by grant, lease, or otherwise. The rights of**
45 **the real estate owner in such slip are included as collateral in any deed of**
46 **trust and uniform commercial code filing of a lender, if any, taking a**
47 **security interest in the owner's real estate;**

48 (8) "Broker price opinion", an opinion of value, prepared by a real estate
49 licensee for a fee, that includes, but is not limited to, analysis of competing properties,
50 comparable sold properties, recommended repairs and costs or suggested marketing
51 techniques. A broker price opinion is not an appraisal and shall specifically state it

52 is not an appraisal;

53 (9) "Certificate", the document issued by the Missouri real estate appraisers
54 commission evidencing that the person named therein has satisfied the requirements
55 for certification as a state-certified real estate appraiser and bearing a certificate
56 number assigned by the commission;

57 (10) "Certificate holder", a person certified by the commission pursuant to the
58 provisions of sections 339.500 to 339.549;

59 (11) "Certified appraisal report", an appraisal prepared or signed by a
60 state-certified real estate appraiser. A certified appraisal report represents to the
61 public that it meets the appraisal standards defined in sections 339.500 to 339.549;

62 (12) "Commission", the Missouri real estate appraisers commission, created
63 in section 339.507;

64 (13) "Comparative market analysis", the analysis of sales of similar recently
65 sold properties in order to derive an indication of the probable sales price of a
66 particular property undertaken by a licensed real estate broker or agent, for his or her
67 principal. A comparative market analysis is not an appraisal and shall specifically
68 state it is not an appraisal;

69 (14) "Disinterested third party" shall not exclude any state-certified real
70 estate appraiser or state-licensed real estate appraiser employed or retained by any
71 bank, savings association, credit union, mortgage banker or other lender to perform
72 appraisal assignments, provided that the appraisal assignments are rendered with
73 respect to loans to be extended by the bank, savings association, credit union,
74 mortgage banker or other lender, and provided further that the state-certified real
75 estate appraiser or state-licensed real estate appraiser is not requested or required
76 to report a predetermined analysis or opinion of value;

77 (15) "License" or "licensure", a license or licensure issued pursuant to the
78 provisions of sections 339.500 to 339.549 evidencing that the person named therein
79 has satisfied the requirements for licensure as a state-licensed real estate appraiser
80 and bearing a license number assigned by the commission;

81 (16) "Real estate", an identified parcel or tract of land, including
82 improvements, if any;

83 (17) "Real estate appraiser" or "appraiser", a person who for a fee or valuable
84 consideration develops and communicates real estate appraisals or otherwise gives an
85 opinion of the value of real estate or any interest therein;

86 (18) "Real estate appraising", the practice of developing and communicating
87 real estate appraisals;

88 (19) "Real property", the interests, benefits and rights inherent in the
89 ownership of real estate;

90 (20) "Residential real estate", any parcel of real estate, improved or
91 unimproved, that is primarily residential in nature and that includes or is intended
92 to include a residential structure containing not more than four dwelling units and
93 no other improvements except those which are typical residential improvements that
94 support the residential use for the location and property type. A residential unit is a
95 condominium, town house or cooperative complex, or a planned unit development is
96 considered to be residential real estate. Subdivisions are not considered residential
97 real estate. Individual parcels of property located within a residential subdivision
98 shall be considered residential property;

99 (21) "Specialized appraisal services", appraisal services which do not fall
100 within the definition of appraisal assignment. The term "specialized services" may
101 include valuation work and analysis work. Regardless of the intention of the client
102 or employer, if the appraiser is acting as a disinterested third party in rendering an
103 unbiased analysis, opinion or conclusion, the work is classified as an appraisal
104 assignment and not specialized services;

105 (22) "State-certified general real estate appraiser", a person who holds a
106 current, valid certificate as a state-certified general real estate appraiser issued
107 pursuant to the provisions of sections 339.500 to 339.549;

108 (23) "State-certified residential real estate appraiser", a person who holds a
109 current, valid certificate as a state-certified residential real estate appraiser issued
110 pursuant to the provisions of sections 339.500 to 339.549;

111 (24) "State-licensed real estate appraiser", a person who holds a current, valid
112 license as a state-licensed real estate appraiser pursuant to the provisions of sections
113 339.500 to 339.549;

114 (25) "Subdivision", a tract of land that has been divided into blocks or plots
115 with streets, roadways, open areas and other facilities appropriate to its development
116 as residential, commercial or industrial sites;

117 (26) "Temporary appraiser licensure or certification", the issuance of a
118 temporary license or certificate by the commission to a person licensed or certified in
119 another state who enters this state for the purpose of completing a particular
120 appraisal assignment.

362.111. 1. A bank or trust company may impose fees or service charges
2 on deposit accounts; however, such fees or service charges are subject to such
3 conditions or requirements that may be fixed by regulations pursuant to section
4 361.105, RSMo, by the director of the division of finance and the state banking
5 board. Notwithstanding any law to the contrary, no such condition or
6 requirement shall be more restrictive than the fees or service charges on deposit
7 accounts or similar accounts permitted any federally chartered depository

8 institution.

9 **2. An agreement to operate or share an automated teller machine**
10 **shall not prohibit an owner or operator of the automated teller machine**
11 **from imposing, on an individual who conducts a transaction using a**
12 **foreign account, an access fee or surcharge that is not otherwise**
13 **prohibited under federal or state law.**

14 **3. As used in this section, the following terms mean:**

15 **(1) "Automated teller machine", any electronic device, wherever**
16 **located, through which a consumer may initiate an electronic funds**
17 **transfer or may order, instruct, or authorize a financial institution to**
18 **debit or credit an account and includes any machine or device which**
19 **may be used to carry out electronic banking business. "Automated**
20 **teller machine" does not include point of sale terminals or telephones**
21 **or personal computers operated by a consumer;**

22 **(2) "Foreign account", an account with a financial institution**
23 **located outside the United States.**

375.539. 1. The director of the department of insurance, financial
2 **institutions and professional registration may deem an insurance**
3 **company to be in such financial condition that its further transaction**
4 **of business would be hazardous to policyholders, creditors, and the**
5 **public, if such company is a property or casualty insurer, or both a**
6 **property and casualty insurer, which has in force any policy with any**
7 **single net retained risk larger than ten percent of that company's**
8 **capital and surplus as of the December thirty-first next preceding.**

9 **2. The following standards, either singly or a combination of two**
10 **or more, may be considered by the director to determine whether the**
11 **continued operation of any insurer transacting an insurance business**
12 **in this state might be deemed to be hazardous to its policyholders,**
13 **creditors, or the general public:**

14 **(1) Adverse findings reported in financial condition and market**
15 **conduct examination reports, audit reports, and actuarial opinions,**
16 **reports, or summaries;**

17 **(2) The National Association of Insurance Commissioners**
18 **Insurance Regulatory Information System and its other financial**
19 **analysis solvency tools and reports;**

20 **(3) Whether the insurer has made adequate provision, according**
21 **to presently accepted actuarial standards of practice, for the**

22 anticipated cash flows required by the contractual obligations and
23 related expenses of the insurer, when considered in light of the assets
24 held by the insurer with respect to such reserves and related actuarial
25 items including, but not limited to, the investment earnings on such
26 assets, and the considerations anticipated to be received and retained
27 under such policies and contracts;

28 (4) The ability of an assuming reinsurer to perform and whether
29 the insurer's reinsurance program provides sufficient protection for the
30 insurer's remaining surplus after taking into account the insurer's cash
31 flow and the classes of business written as well as the financial
32 condition of the assuming reinsurer;

33 (5) Whether the insurer's operating loss in the last twelve-month
34 period or any shorter period of time, including but not limited to net
35 capital gain or loss, change in non-admitted assets, and cash dividends
36 paid to shareholders, is greater than fifty percent of the insurer's
37 remaining surplus as regards to policyholders in excess of the minimum
38 required;

39 (6) Whether the insurer's operating loss in the last twelve-month
40 period or any shorter period of time, excluding net capital gains, is
41 greater than twenty percent of the insurer's remaining surplus as
42 regards to policyholders in excess of the minimum required;

43 (7) Whether a reinsurer, obligor, or any entity within the
44 insurer's insurance holding company system, is insolvent, threatened
45 with insolvency or delinquent in payment of its monetary or other
46 obligations, and which in the opinion of the director may affect the
47 solvency of the insurer;

48 (8) Contingent liabilities, pledges, or guaranties which either
49 individually or collectively involve a total amount which in the opinion
50 of the director may affect the solvency of the insurer;

51 (9) Whether any "controlling" person of an insurer is delinquent
52 in the transmitting to, or payment of, net premiums to the insurer. As
53 used in this subdivision, the term "controlling" shall have the same
54 meaning assigned to it in subdivision (2) of section 382.010;

55 (10) The age and collectibility of receivables;

56 (11) Whether the management of an insurer, including officers,
57 directors, or any other person who directly or indirectly controls the
58 operation of the insurer, fails to possess and demonstrate the

59 competence, fitness, and reputation deemed necessary to serve the
60 insurer in such position;

61 (12) Whether management of an insurer has failed to respond to
62 inquiries relative to the condition of the insurer or has furnished false
63 and misleading information concerning an inquiry;

64 (13) Whether the insurer has failed to meet financial and holding
65 company filing requirements in the absence of a reason satisfactory to
66 the director;

67 (14) Whether management of an insurer either has filed any false
68 or misleading sworn financial statement, or has released false or
69 misleading financial statement to lending institutions or to the general
70 public, or has made a false or misleading entry, or has omitted an entry
71 of material amount in the books of the insurer;

72 (15) Whether the insurer has grown so rapidly and to such an
73 extent that it lacks adequate financial and administrative capacity to
74 meet its obligations in a timely manner;

75 (16) Whether the insurer has experienced or will experience in
76 the foreseeable future cash flow or liquidity problems;

77 (17) Whether management has established reserves that do not
78 comply with minimum standards established by state insurance laws,
79 regulations, statutory accounting standards, sound actuarial principles
80 and standards of practice;

81 (18) Whether management persistently engages in material under
82 reserving that results in adverse development;

83 (19) Whether transactions among affiliates, subsidiaries, or
84 controlling persons for which the insurer receives assets or capital
85 gains, or both, do not provide sufficient value, liquidity, or diversity to
86 assure the insurer's ability to meet its outstanding obligations as they
87 mature;

88 (20) Any other finding determined by the director to be
89 hazardous to the insurer's policyholders, creditors, or general public.

90 3. For the purposes of making a determination of an insurer's
91 financial condition under this section, the director may:

92 (1) Disregard any credit or amount receivable resulting from
93 transactions with a reinsurer that is insolvent, impaired, or otherwise
94 subject to a delinquency proceeding;

95 (2) Make appropriate adjustments including disallowance to

96 asset values attributable to investments in or transactions with parents,
97 subsidiaries, or affiliates consistent with the National Association of
98 Insurance Commissioners Accounting Policies and Procedures Manual,
99 state laws and regulations;

100 (3) Refuse to recognize the stated value of accounts receivable
101 if the ability to collect receivables is highly speculative in view of the
102 age of the account or the financial condition of the debtor;

103 (4) Increase the insurer's liability in an amount equal to any
104 contingent liability, pledge, or guarantee not otherwise included if
105 there is a substantial risk that the insurer will be called upon to meet
106 the obligation undertaken within the next twelve-month period.

107 4. If the director determines that the continued operation of the
108 insurer licensed to transact business in this state may be hazardous to
109 its policyholders, creditors, or the general public, then the director
110 may, to the extent authorized by law and in accordance with any
111 procedures required by law, issue an order requiring the insurer to:

112 (1) Reduce the total amount of present and potential liability for
113 policy benefits by reinsurance;

114 (2) Reduce, suspend, or limit the volume of business being
115 accepted or renewed;

116 (3) Reduce general insurance and commission expenses by
117 specified methods;

118 (4) Increase the insurer's capital and surplus;

119 (5) Suspend or limit the declaration and payment of dividend by
120 an insurer to its stockholders or to its policyholders;

121 (6) File reports in a form acceptable to the director concerning
122 the market value of an insurer's assets;

123 (7) Limit or withdraw from certain investments or discontinue
124 certain investment practices to the extent the director deems
125 necessary;

126 (8) Document the adequacy of premium rates in relation to the
127 risks insured;

128 (9) File, in addition to regular annual statements, interim
129 financial reports on the form adopted by the National Association of
130 Insurance Commissioners or in such format as promulgated by the
131 director;

132 (10) Correct corporate governance practice deficiencies, and

133 **adopt and utilize governance practices acceptable to the director;**

134 **(11) Provide a business plan to the director in order to continue**
135 **to transact business in the state;**

136 **(12) Notwithstanding any other provision of law limiting the**
137 **frequency or amount of premium rate adjustments, adjust rates for any**
138 **non-life insurance product written by the insurer that the director**
139 **considers necessary to improve the financial condition of the insurer.**

140 **5. An insurer subject to an order under subsection 4 of this**
141 **section may request a hearing before the director in accordance with**
142 **the provisions of chapter 536. The notice of hearing shall be served**
143 **upon the insurer pursuant to section 536.067. The notice of hearing**
144 **shall state the time and place of hearing and the conduct, condition, or**
145 **ground upon which the director based the order. Unless mutually**
146 **agreed between the director and the insurer, the hearing shall occur**
147 **not less than ten days nor more than thirty days after notice is served**
148 **and shall be either in Cole County or in some other place convenient**
149 **to the parties designated by the director. The director shall hold all**
150 **hearings under this subsection privately, unless the insurer requests**
151 **a public hearing, in which case the hearing shall be public.**

152 **6. This section shall not be interpreted to limit the powers**
153 **granted the director by any laws or parts of laws of this state, nor shall**
154 **this section be interpreted to supercede any laws or parts of laws of**
155 **this state, except that if the insurer is a foreign insurer, the director's**
156 **order under subsection 4 of this section may be limited to the extent**
157 **expressly provided by any laws or parts of laws of this state.**

375.1152. For purposes of sections 375.570 to 375.750 and 375.1150 to
2 375.1246, the following words and phrases shall mean:

3 (1) "Allocated loss adjustment expenses", those fees, costs or expenses
4 reasonably chargeable to the investigation, negotiation, settlement or defense of an
5 individual claim or loss or to the protection and perfection of the subrogation rights
6 of any insolvent insurer arising out of a policy of insurance issued by the insolvent
7 insurer. "Allocated loss adjustment expenses" shall include all court costs, fees and
8 expenses; fees for service of process; fees to attorneys; costs of undercover operative
9 and detective services; fees of independent adjusters or attorneys for investigation or
10 adjustment of claims beyond initial investigation; costs of employing experts for
11 preparation of maps, photographs, diagrams, chemical or physical analysis or for
12 advice, opinion or testimony concerning claims under investigation or in litigation;

13 costs for legal transcripts or testimony taken at coroner's inquests, criminal or civil
14 proceedings; costs for copies of any public records; costs of depositions and
15 court-reported or -recorded statements. "Allocated loss adjustment expenses" shall
16 not include the salaries of officials, administrators or other employees or normal
17 overhead charges such as rent, postage, telephone, lighting, cleaning, heating or
18 similar expenses;

19 (2) "Ancillary state", any state other than a domiciliary state;

20 (3) "Creditor", a person having any claim, whether matured or unmatured,
21 liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent;

22 (4) "Delinquency proceeding", any proceeding instituted against an insurer for
23 the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer,
24 and any summary proceeding under sections 375.1160, 375.1162 and 375.1164;

25 (5) "Director", the director of the department of insurance, financial
26 institutions and professional registration;

27 (6) "Doing business" includes any of the following acts, whether effected by
28 mail or otherwise:

29 (a) The issuance or delivery of contracts of insurance to persons resident in
30 this state;

31 (b) The solicitation of applications for such contracts, or other negotiations
32 preliminary to the execution of such contracts;

33 (c) The collection of premiums, membership fees, assessments, or other
34 consideration for such contracts;

35 (d) The transaction of matters subsequent to execution of such contracts and
36 arising out of them; or

37 (e) Operating under a license or certificate of authority, as an insurer, issued
38 by the department of insurance, financial institutions and professional registration;

39 (7) "Domiciliary state", the state in which an insurer is incorporated or
40 organized or, in the case of an alien insurer, its state of entry;

41 (8) "Fair consideration" is given for property or obligation:

42 (a) When in exchange for such property or obligation, as a fair equivalent
43 thereof, and in good faith, property is conveyed or services are rendered or an
44 obligation is incurred or an antecedent debt is satisfied; or

45 (b) When such property or obligation is received in good faith to secure a
46 present advance or antecedent debt in an amount not disproportionately small as
47 compared to the value of the property or obligation obtained;

48 (9) "Foreign country", any jurisdiction not in the United States;

49 (10) "Formal delinquency proceeding", any liquidation or rehabilitation
50 proceeding;

51 (11) "General assets", all property, real, personal, or otherwise, not specifically
52 mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of
53 specified persons or classes of persons. As to specifically encumbered property,
54 "general assets" includes all such property or its proceeds in excess of the amount
55 necessary to discharge the sum or sums secured thereby. Assets held in trust and on
56 deposit for the security or benefit of all policyholders or all policyholders and
57 creditors, in more than a single state, shall be treated as general assets;

58 (12) "Guaranty association", the Missouri property and casualty insurance
59 guaranty association created by sections 375.771 to 375.779, as amended, the Missouri
60 life and health insurance guaranty association created by sections 376.715 to 376.758,
61 RSMo, as amended, and any other similar entity now or hereafter created by the laws
62 of this state for the payment of claims of insolvent insurers. "Foreign guaranty
63 association" means any similar entities now in existence or hereafter created by the
64 laws of any other state;

65 (13) "Insolvency" or "insolvent" means:

66 (a) For an insurer issuing only assessable fire insurance policies:

67 a. The inability to pay an obligation within thirty days after it becomes
68 payable; or

69 b. If an assessment be made within thirty days after such date, the inability
70 to pay such obligation thirty days following the date specified in the first assessment
71 notice issued after the date of loss;

72 (b) For any other insurer, that it is unable to pay its obligations when they
73 are due, or when its admitted assets do not exceed its liabilities plus the greater of:

74 a. Any capital and surplus required by law for its organization; or

75 b. The total par or stated value of its authorized and issued capital stock;

76 (c) As to any insurer licensed to do business in this state as of August 28,
77 1991, which does not meet the standards established under paragraph (b) of this
78 subdivision, the term "insolvency" or "insolvent" shall mean, for a period not to exceed
79 three years from August 28, 1991, that it is unable to pay its obligations when they
80 are due or that its admitted assets do not exceed its liabilities plus any required
81 capital contribution ordered by the director under any other provisions of law;

82 (d) For purposes of this subdivision "liabilities" shall include but not be
83 limited to reserves required by statute or by the department of insurance, financial
84 institutions and professional registration regulations or specific requirements imposed
85 by the director upon a subject company at the time of admission or subsequent
86 thereto;

87 (e) For purposes of this subdivision, an obligation is payable within ninety
88 days of the resolution of any dispute regarding the obligation;

89 (14) "Insurer", any person who has done, purports to do, is doing or is licensed
90 to do insurance business as described in section 375.1150, and is or has been subject
91 to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or
92 conservation by, any insurance department of any state. For purposes of sections
93 375.1150 to 375.1246, any other persons included under section 375.1150 shall be
94 deemed to be insurers;

95 (15) "Netting agreement":

96 (a) A contract or agreement, including terms and conditions
97 incorporated by reference therein, including a master agreement which
98 master agreement, together with all schedules, confirmations, definitions
99 and addenda thereto and transactions under any thereof, shall be treated
100 as one netting agreement, that documents one or more transactions
101 between the parties to the agreement for or involving one or more qualified
102 financial contracts and that provides for the netting, liquidation, setoff,
103 termination, acceleration or close out under or in connection with one or
104 more qualified financial contracts or present or future payment or delivery
105 obligations or payment or delivery entitlements thereunder, including
106 liquidation or close-out values relating to such obligations or entitlements,
107 among the parties to the netting agreement;

108 (b) Any master agreement or bridge agreement for one or more
109 master agreements described in paragraph (a) of this subdivision; or

110 (c) Any security agreement or arrangement or other credit
111 enhancement or guarantee or reimbursement obligation related to any
112 contract or agreement described in paragraph (a) or (b) of this subdivision;
113 provided that any contract or agreement described in paragraph (a) or (b)
114 of this subdivision relating to agreements or transactions that are not
115 qualified financial contracts shall be deemed to be a netting agreement only
116 with respect to those agreements or transactions that are qualified
117 financial contracts;

118 (16) "Preferred claim", any claim with respect to which the terms of sections
119 375.1150 to 375.1246 accord priority of payment from the general assets of the
120 insurer;

121 (17) "Qualified financial contract", any commodity contract, forward
122 contract, repurchase agreement, securities contract, swap agreement, and
123 any similar agreement that the director determines by regulation,
124 resolution, or order to be a qualified financial contract for the purposes of
125 sections 375.1150 to 375.1246;

126 (a) "Commodity contract", shall mean:

127 a. A contract for the purchase or sale of a commodity for future
128 delivery on, or subject to the rules of, a board of trade or contract market
129 under the Commodity Exchange Act, 7 U.S.C. Section 1, et seq., or a board
130 of trade outside the United States;

131 b. An agreement that is subject to regulation under Section 19 of the
132 Commodity Exchange Act, 7 U.S.C. Section 1, et seq., and that is commonly
133 known to the commodities trade as a margin account, margin contract,
134 leverage account, or leverage contract;

135 c. An agreement or transaction that is subject to regulation under
136 Section 4c(b) of the Commodity Exchange Act, 7 U.S.C. Section 1, et seq.,
137 and that is commonly known to the commodities trade as a commodity
138 option;

139 d. Any combination of the agreements or transactions referred to in
140 this paragraph; or

141 e. Any option to enter into an agreement or transaction referred to
142 in this paragraph;

143 (b) "Forward contract", "repurchase agreement", "securities contract",
144 and "swap agreement" shall have the meaning set forth in the Federal
145 Deposit Insurance Act, 12 U.S.C. Section 1821(e)(8)(D), as amended;

146 [(16)] (18) "Receiver", a receiver, liquidator, administrative supervisor,
147 rehabilitator or conservator, as the context requires;

148 [(17)] (19) "Reciprocal state", any state other than this state in which in
149 substance and effect, provisions substantially similar to subsection 1 of section
150 375.1176 and sections 375.1235, 375.1236, 375.1240, 375.1242 and 375.1244 have been
151 enacted and are in force, and in which laws are in force requiring that the director of
152 the state department of insurance, financial institutions and professional registration
153 or equivalent official be the receiver of a delinquent insurer, and in which some
154 provision exists for the avoidance of fraudulent conveyances and preferential
155 transfers;

156 [(18)] (20) "Secured claim", any claim secured by mortgage, trust deed,
157 pledge, deposit as security, escrow, or otherwise, including a pledge of assets allocated
158 to a separate account established pursuant to section 376.309, RSMo; but not
159 including special deposit claims or claims against general assets. The term also
160 includes claims which have become liens upon specific deposit claims or claims against
161 general assets. The term also includes claims which have become liens upon specific
162 assets by reason of judicial process;

163 [(19)] (21) "Special deposit claim", any claim secured by a deposit made
164 pursuant to statute for the security or benefit of a limited class or classes of persons,

165 but not including any claim secured by general assets;

166 [(20)] (22) "State", any state, district, or territory of the United States and
167 the Panama Canal Zone;

168 [(21)] (23) "Transfer" shall include the sale and every other and different
169 mode, direct or indirect, of disposing of or of parting with property or with an interest
170 therein, or with the possession thereof, or of fixing a lien upon property or upon an
171 interest therein, absolutely or conditionally, voluntarily, by or without judicial
172 proceedings. The retention of a security title to property delivered to a debtor shall
173 be deemed a transfer suffered by the debtor.

375.1155. 1. Any receiver appointed in a proceeding under sections 375.1150
2 to 375.1246 may at any time apply for, and any court of general jurisdiction may
3 grant, such restraining orders, preliminary and permanent injunctions, and other
4 orders as may be deemed necessary and proper to prevent:

5 (1) The transaction of further business;

6 (2) The transfer of property;

7 (3) Interference with the receiver or with a proceeding under sections
8 375.1150 to 375.1246;

9 (4) Waste of the insurer's assets;

10 (5) Dissipation and transfer of bank accounts;

11 (6) The institution or further prosecution of any actions or proceedings;

12 (7) The obtaining of preferences, judgments, attachments, garnishments or
13 liens against the insurer, its assets or its policyholders;

14 (8) The levying of execution against the insurer, its assets or its policyholders;

15 (9) The making of any sale or deed for nonpayment of taxes or assessments
16 that would lessen the value of the assets of the insurer;

17 (10) The withholding from the receiver of books, accounts, documents, or other
18 records relating to the business of the insurer; or

19 (11) Any other threatened or contemplated action that might lessen the value
20 of the insurer's assets or prejudice the rights of policyholders, creditors or
21 shareholders, or the administration of any proceeding under this act.

22 2. The receiver may apply to any court outside of the state for the relief
23 described in subsection 1 of this section.

24 **3. Notwithstanding anything to the contrary in this section, the**
25 **commencement of a delinquency proceeding under sections 375.1150 to**
26 **375.1246 shall not operate as a stay or prohibition of any right to cause the**
27 **netting, liquidation, setoff, termination, acceleration, or close out of**
28 **obligations, or enforcement of any security agreement or arrangement or**
29 **other credit enhancement or guarantee or reimbursement obligation, under**

30 or in connection with any netting agreement or qualified financial contract
31 as provided for in section 375.1191.

375.1191. 1. Notwithstanding any other provision of sections
2 375.1150 to 375.1246, including any other provision of sections 375.1150 to
3 375.1246 permitting the modification of contracts, or other law of a state,
4 no person shall be stayed or prohibited from exercising:

5 (1) A contractual right to cause the termination, liquidation,
6 acceleration, or close out of obligations under or in connection with any
7 netting agreement or qualified financial contract with an insurer because
8 of:

9 (a) The insolvency, financial condition, or default of the insurer at
10 any time, provided that the right is enforceable under applicable law other
11 than sections 375.1150 to 375.1246; or

12 (b) The commencement of a formal delinquency proceeding under
13 sections 375.1150 to 375.1246;

14 (2) Any right under a pledge, security, collateral, reimbursement, or
15 guarantee agreement or arrangement or any other similar security
16 arrangement or arrangement or other credit enhancement relating to one
17 or more netting agreements or qualified financial contracts;

18 (3) Subject to any provision of section 375.1198, any right to set off
19 or net out any termination value, payment amount, or other transfer
20 obligation arising under or in connection with one or more qualified
21 financial contracts where the counterparty or its guarantor is organized
22 under the laws of the United States or a state or a foreign jurisdiction
23 approved by the Securities Valuation Office (SVO) of the NAIC as eligible
24 for netting; or

25 (4) If a counterparty to a master netting agreement or a qualified
26 financial contract with an insurer subject to a proceeding under sections
27 375.1150 to 375.1246 terminates, liquidates, closes out, or accelerates the
28 agreement or contract, damages shall be measured as of the date or dates
29 of termination, liquidation, close out, or acceleration. The amount of a
30 claim for damages shall be actual direct compensatory damages calculated
31 in accordance with subsection 6 of this section.

32 2. Upon termination of a netting agreement or qualified financial
33 contract, the net or settlement amount, if any, owed by a nondefaulting
34 party to an insurer against which an application or petition has been filed
35 under sections 375.1150 to 375.1246 shall be transferred to or on the order
36 of the receiver for the insurer, even if the insurer is the defaulting party,

37 notwithstanding any walkaway clause in the netting agreement or qualified
38 financial contract. For purposes of this subsection, the term "walkaway
39 clause" means a provision in a netting agreement or a qualified financial
40 contract that, after calculation of a value of a party's position or an amount
41 due to or from one of the parties in accordance with its terms upon
42 termination, liquidation, or acceleration of the netting agreement or
43 qualified financial contract, either does not create a payment obligation of
44 a party or extinguishes a payment obligation of a party in whole or in part
45 solely because of the party's status as a nondefaulting party. Any limited
46 two-way payment or first method provision in a netting agreement or
47 qualified financial contract with an insurer that has defaulted shall be
48 deemed to be a full two-way payment or second method provision as against
49 the defaulting insurer. Any such property or amount shall, except to the
50 extent it is subject to one or more secondary liens or encumbrances or
51 rights of netting or setoff, be a general asset of the insurer.

52 3. In making any transfer of a netting agreement or qualified
53 financial contract of an insurer subject to a proceeding under sections
54 375.1150 to 375.1246, the receiver shall either:

55 (1) Transfer to one party, other than an insurer subject to a
56 proceeding under sections 375.1150 to 375.1246, all netting agreements and
57 qualified financial contracts between a counterparty or any affiliate of the
58 counterparty and the insurer that is the subject of the proceeding,
59 including:

60 (a) All rights and obligations of each party under each netting
61 agreement and qualified financial contract; and

62 (b) All property, including any guarantees or other credit
63 enhancement, securing any claims of each party under each netting
64 agreement and qualified financial contract; or

65 (2) Transfer none of the netting agreements, qualified financial
66 contracts, rights, obligations or property referred to in subdivision (1) of
67 this subsection, with respect to the counterparty and any affiliate of the
68 counterparty.

69 4. If a receiver for an insurer makes a transfer of one or more
70 netting agreements or qualified financial contracts, then the receiver shall
71 use its best efforts to notify any person who is party to the netting
72 agreements or qualified financial contracts of the transfer by 12:00 noon,
73 the receiver's local time, on the business day following the transfer. For
74 purposes of this subsection, "business day" means a day other than a

75 Saturday, Sunday, or any day on which either the New York Stock
76 Exchange or the Federal Reserve Bank of New York is closed.

77 5. Notwithstanding any other provision of sections 375.1150 to
78 375.1246, a receiver may not avoid a transfer of money or other property
79 arising under or in connection with a netting agreement or qualified
80 financial contract, or any pledge, security, collateral or guarantee
81 agreement or any other similar security arrangement or credit support
82 document relating to a netting agreement or qualified financial contract,
83 that is made before the commencement of a formal delinquency proceeding
84 under sections 375.1150 to 375.1246. However, a transfer may be avoided
85 pursuant to section 375.1192 if the transfer was made with actual intent to
86 hinder, delay or defraud the insurer, a receiver appointed for the insurer,
87 or existing or future creditors.

88 6. (1) In exercising the rights of disaffirmance or repudiation of a
89 receiver with respect to any netting agreement or qualified financial
90 contract to which an insurer is a party, the receiver for the insurer shall
91 either:

92 (a) Disaffirm or repudiate all netting agreements and qualified
93 financial contracts between a counterparty or any affiliate of the
94 counterparty and the insurer that is the subject of the proceeding; or

95 (b) Disaffirm or repudiate none of the netting agreements and
96 qualified financial contracts referred to in paragraph (a) of this
97 subdivision, with respect to the person or any affiliate of the person.

98 (2) Notwithstanding any other provision of sections 375.1150 to
99 375.1246, any claim of a counterparty against the estate arising from the
100 receiver's disaffirmance or repudiation of a netting agreement or qualified
101 financial contract that has not been previously affirmed in the liquidation
102 or immediately preceding conservation or rehabilitation case shall be
103 determined and shall be allowed or disallowed as if the claim had arisen
104 before the date of the filing of the petition for liquidation or, if a
105 conservation or rehabilitation proceeding is converted to a liquidation
106 proceeding, as if the claim had arisen before the date of the filing of the
107 petition for conservation or rehabilitation. The amount of the claim shall
108 be the actual direct compensatory damages determined as of the date of the
109 disaffirmance or repudiation of the netting agreement or qualified financial
110 contract. The term "actual direct compensatory damages" does not include
111 punitive or exemplary damages, damages for lost profit or lost opportunity
112 or damages for pain and suffering, but does include normal and reasonable

113 costs of cover or other reasonable measures of damages utilized in the
114 derivatives, securities or other market for the contract and agreement
115 claims.

116 7. The term "contractual right" as used in this section includes any
117 right set forth in a rule or bylaw of a derivatives clearing organization, as
118 defined in the Commodity Exchange Act, a multilateral clearing
119 organization, as defined in the Federal Deposit Insurance Corporation
120 Improvement Act of 1991, a national securities exchange, a national
121 securities association, a securities clearing agency, a contract market
122 designated under the Commodity Exchange Act, a derivatives transaction
123 execution facility registered under the Commodity Exchange Act, or a
124 board of trade, as defined in the Commodity Exchange Act, or in a
125 resolution of the governing board thereof and any right, whether or not
126 evidenced in writing, arising under statutory or common law, or under law
127 merchant, or by reason of normal business practice.

128 8. The provisions of this section shall not apply to persons who are
129 affiliates of the insurer that is the subject of the proceeding.

130 9. All rights of counterparties under sections 375.1150 to 375.1246
131 shall apply to netting agreements and qualified financial contracts entered
132 into on behalf of the general account or separate accounts if the assets of
133 each separate account are available only to counterparties to netting
134 agreements and qualified financial contracts entered into on behalf of that
135 separate account.

375.1255. 1. "Company action level event" means with respect to any
2 insurer, any of the following events:

3 (1) The filing of an RBC report by the insurer which indicates that:

4 (a) The insurer's total adjusted capital is greater than or equal to its
5 regulatory action level RBC but less than its company action level RBC; or

6 (b) If a life and health insurer, the insurer has total adjusted capital
7 which is greater than or equal to its company action level RBC but less than the
8 product of its authorized control level capital and 2.5, and has a negative trend;

9 (c) **If a property and casualty insurer, the insurer has total**
10 **adjusted capital which is greater than or equal to its Company Action**
11 **Level RBC but less than the product of its Authorized Control Level**
12 **RBC and 3.0 and triggers the trend test determined in accordance with**
13 **the trend test calculation included in the Property and Casualty RBC**
14 **report instructions;**

15 (2) The notification by the director to the insurer of an adjusted RBC

16 report that indicates the event in paragraph (a) [or], (b), **or (c)** of subdivision (1)
17 of this subsection, if the insurer does not challenge the adjusted RBC report
18 pursuant to section 375.1265;

19 (3) If pursuant to section 375.1265 the insurer challenges an adjusted
20 RBC report that indicates the event described in subdivision (1) of this
21 subsection, the notification by the director to the insurer that the director has,
22 after a hearing, rejected the insurer's challenge.

23 2. In the event of a company action level event the insurer shall prepare
24 and submit to the director an RBC plan which shall:

25 (1) Identify the conditions in the insurer which contribute to the company
26 action level event;

27 (2) Contain proposals of corrective actions which the insurer intends to
28 take and would be expected to result in the elimination of the company action
29 level event;

30 (3) Provide projections of the insurer's financial results in the current
31 year and at least the four succeeding years, both in the absence of proposed
32 corrective actions and giving effect to the proposed corrective actions, including
33 projections of statutory operating income, net income, capital or surplus. The
34 projections for both new and renewal business might include separate projections
35 for each major line of business and separately identify each significant income,
36 expense and benefit component;

37 (4) Identify the key assumptions impacting the insurer's projections and
38 the sensitivity of the projections to the assumptions; and

39 (5) Identify the quality of, and problems associated with, the insurer's
40 business, including but not limited to its assets, anticipated business growth and
41 associated surplus strain, extraordinary exposure to risk, mix of business and use
42 of reinsurance in each case, if any.

43 3. The RBC plan shall be submitted:

44 (1) Within forty-five days of the company action level event; or

45 (2) If the insurer challenges an adjusted RBC report pursuant to section
46 375.1265 within forty-five days after notification to the insurer that the director
47 has, after a hearing, rejected the insurer's challenge.

48 4. Within sixty days after the submission by an insurer of an RBC plan
49 to the director, the director shall notify the insurer whether the RBC plan shall
50 be implemented or is, in the judgment of the director, unsatisfactory. If the
51 director determines the RBC plan is unsatisfactory, the notification to the insurer

52 shall set forth the reasons for the determination, and may set forth proposed
53 revisions which will render the RBC plan satisfactory, in the judgment of the
54 director. Upon notification from the director, the insurer shall prepare a revised
55 RBC plan, which may incorporate by reference any revisions proposed by the
56 director, and shall submit the revised RBC plan to the director:

57 (1) Within forty-five days after the notification from the director; or

58 (2) If the insurer challenges the notification from the director pursuant
59 to section 375.1265, within forty-five days after a notification to the insurer that
60 the director has, after a hearing, rejected the insurer's challenge.

61 5. In the event of a notification by the director to an insurer that the
62 insurer's RBC plan or revised RBC plan is unsatisfactory, the director may at the
63 director's discretion, subject to the insurer's right to a hearing under section
64 375.1265, specify in the notification that the notification constitutes a regulatory
65 action level event.

66 6. Every domestic insurer that files an RBC plan or revised RBC plan
67 with the director shall file a copy of the RBC plan or revised RBC plan with the
68 chief insurance regulatory official in any state in which the insurer is authorized
69 to do business if:

70 (1) Such state has an RBC provision, substantially similar to subsection
71 1 of section 375.1267; and

72 (2) The chief insurance regulatory official of that state has notified the
73 insurer of its request for the filing in writing, in which case the insurer shall file
74 a copy of the RBC plan or revised RBC plan in that state no later than the later
75 of:

76 (a) Fifteen days after the receipt of notice to file a copy of its RBC plan
77 or revised RBC plan with the state; or

78 (b) The date on which the RBC plan or revised RBC plan is filed under
79 subsection 3 or 4 of this section.

408.052. 1. No lender shall charge, require or receive, on any residential
2 real estate loan, any points or other fees of any nature whatsoever, excepting
3 insurance, including insurance for involuntary unemployment coverage, and a
4 one-percent origination fee, whether from the buyer or the seller or any other
5 person, except that the lender may charge bona fide expenses paid by the lender
6 to any other person or entity except to an officer, employee, or director of the
7 lender or to any business in which any officer, employee or director of the lender
8 owns any substantial interest for services actually performed in connection with

9 a loan. In addition to the foregoing, if the loan is for the construction, repair, or
10 improvement of residential real estate, the lender may charge a fee not to exceed
11 one percent of the loan amount for inspection and disbursement of the proceeds
12 of the loan to third parties. Notwithstanding the foregoing, the parties may
13 contract for a default charge for any installment not paid in full within fifteen
14 days of its scheduled due date. The restrictions of this section shall not apply:

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

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

26 (3) Provided that the 1994 reenactment of this section shall not be
27 construed to be action taken in accordance with Public Law 96-221, Section
28 501(b)(4). Any points or fees received in excess of those permitted under this
29 section shall be returned to the person from whom received upon demand.

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

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

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

43 3. The lender may charge and collect bona fide fees for services actually
44 and necessarily performed in good faith in connection with a residential real

45 estate loan as provided in subsection 2 of this section; however, the lender's board
46 of directors shall determine whether such bona fide fees shall be paid to the
47 lender or businesses related to the lender in subsection 2 of this section, but may
48 allow current contractual relationships to continue for up to two years.

49 **4. The lender may offer, sell, and finance automobile club**
50 **memberships, service contracts issued by providers registered under**
51 **sections 385.300 to 385.320, motor vehicle service contracts issued by**
52 **providers registered under sections 385.200 to 385.220, vehicle**
53 **protection devices issued by providers registered under sections**
54 **385.400 to 385.436, if such service contracts, motor vehicle service**
55 **contracts, and vehicle protection devices are required to be registered**
56 **by the department, and other plans and services that provide a benefit**
57 **to the borrower provided that:**

58 **(1) The cost of the product is disclosed separate from the loan**
59 **contract;**

60 **(2) Lenders may not require the purchase of the plan as a**
61 **condition for approval of the loan;**

62 **(3) Purchasers of the plans shall be entitled to cancel the**
63 **transaction and receive a refund within thirty days of the purchase;**

64 **(4) Purchasers of the plans must provide, separate and apart**
65 **from the loan document, a written acknowledgment of their intent to**
66 **purchase the plan;**

67 **(5) No plan shall include reimbursement for a deductible on a**
68 **property insurance claim;**

69 **(6) All optional products other than the loan contract shall be**
70 **clearly identified as optional and not a required purchase; and**

71 **(7) Nothing in this subsection shall exempt such other plans and**
72 **services from any other requirements or laws governing such product.**

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

79 **[5.] 6.** Any lender who knowingly violates the provisions of this section
80 is guilty of a class B misdemeanor.

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

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

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

18 (3) If the contract so provides, a charge for late payment on each
19 installment or minimum payment in default for a period of not less than fifteen
20 days in an amount not to exceed five percent of each installment due or the
21 minimum payment due or fifteen dollars, whichever is greater, not to exceed fifty
22 dollars. If the contract so provides, a charge for late payment on each twenty-five
23 dollars or less installment in default for a period of not less than fifteen days
24 shall not exceed five dollars;

25 (4) If the contract so provides, a charge for late payment for a single
26 payment note in default for a period of not less than fifteen days in an amount
27 not to exceed five percent of the payment due; provided that, the late charge for
28 a single payment note shall not exceed fifty dollars;

29 (5) Charges or premiums for insurance written in connection with any
30 loan against loss of or damage to property or against liability arising out of
31 ownership or use of property as provided in section 367.170, RSMo; however,
32 notwithstanding any other provision of law, with the consent of the borrower,
33 such insurance may cover property all or part of which is pledged as security for
34 the loan, and charges or premiums for insurance providing life, health, accident,
35 or involuntary unemployment coverage;

36 (6) Reasonable towing costs and expenses of retaking, holding, preparing

37 for sale, and selling any personal property in accordance with section 400.9,
38 RSMo;

39 (7) Charges assessed by any institution for processing a refused
40 instrument plus a handling fee of not more than twenty-five dollars;

41 (8) If the contract or promissory note, signed by the borrower, provides for
42 attorney fees, and if it is necessary to bring suit, such attorney fees may not
43 exceed fifteen percent of the amount due and payable under such contract or
44 promissory note, together with any court costs assessed. The attorney fees shall
45 only be applicable where the contract or promissory note is referred for collection
46 to an attorney, and is not handled by a salaried employee of the holder of the
47 contract;

48 (9) Provided the debtor agrees in writing, the lender may collect a fee in
49 advance for allowing the debtor to defer up to three monthly loan payments, so
50 long as the fee is no more than the lesser of fifty dollars or ten percent of the loan
51 payments deferred, no extensions are made until the first loan payment is
52 collected and no more than one deferral in a twelve-month period is agreed to and
53 collected on any one loan; this subdivision applies to nonprecomputed loans only
54 and does not affect any other subdivision;

55 (10) If the open-end credit contract is tied to a transaction account in a
56 depository institution, such account is in the institution's assets and such
57 contract provides for loans of thirty-one days or longer which are "open-end
58 credit", as such term is defined in the federal Consumer Credit Protection Act and
59 regulations thereunder, the creditor may charge a credit advance fee of the lesser
60 of twenty-five dollars or five percent of the credit advanced from time to time
61 from the line of credit; such credit advance fee may be added to the open-end
62 credit outstanding along with any interest, and shall not be considered the
63 unlawful compounding of interest as that term is defined in section 408.120;

64 **(11) A deficiency waiver addendum, guaranteed asset protection,**
65 **or a similar product purchased as part of a loan transaction with**
66 **collateral and at the borrower's consent, provided the cost of the**
67 **product is disclosed in the loan contract, is reasonable, and the**
68 **requirements of section 408.380 are met;**

69 **(12) The lender may offer, sell, and finance automobile club**
70 **memberships, service contracts issued by providers registered under**
71 **sections 385.300 to 385.320, motor vehicle service contracts issued by**
72 **providers registered under sections 385.200 to 385.220, vehicle**

73 **protection devices issued by providers registered under sections**
74 **385.400 to 385.436, if such service contracts, motor vehicle service**
75 **contracts, and vehicle protection devices are required to be registered**
76 **by the department, and other plans and services that provide a benefit**
77 **to the borrower provided that:**

78 **(a) The cost of the product is disclosed separate from the loan**
79 **contract;**

80 **(b) Lenders may not require the purchase of the plan as a**
81 **condition for approval of the loan;**

82 **(c) Purchasers of the plans shall be entitled to cancel the**
83 **transaction and receive a refund within thirty days of the purchase;**

84 **(d) Purchasers of the plans must provide, separate and apart**
85 **from the loan document, a written acknowledgment of their intent to**
86 **purchase the plan;**

87 **(e) No plan shall include reimbursement for a deductible on a**
88 **property insurance claim;**

89 **(f) All optional products other than the loan contract shall be**
90 **clearly identified as optional and not a required purchase; and**

91 **(g) Nothing in this subdivision shall exempt such other plans and**
92 **services from and other requirements or laws governing such product.**

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

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

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

4 (1) Fees and charges prescribed by law actually and necessarily paid to

5 public officials for perfecting, releasing, or satisfying a security interest related
6 to the second mortgage loan;

7 (2) Taxes;

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

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

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

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

14 (d) Appraisal fees; and

15 (e) Fees for credit reports;

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

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

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

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

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

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

30 (2) For insurance providing life, accident, health or involuntary
31 unemployment coverage.

32 3. The cost of any insurance shall not exceed the rates filed with the
33 department of insurance, financial institutions and professional registration, and
34 the insurance shall be obtained from an insurance company duly authorized to
35 conduct business in this state. Any person or entity making second mortgage
36 loans, or any of its employees, may be licensed to sell insurance permitted in this
37 section.

38 4. On any second mortgage loan, a default charge may be contracted for
39 and received for any installment or minimum payment not paid in full within
40 fifteen days of its scheduled due date equal to five percent of the amount or

41 fifteen dollars, whichever is greater, not to exceed fifty dollars. A default charge
42 may be collected only once on an installment or a payment due however long it
43 remains in default. A default charge may be collected at the time it accrues or
44 at any time thereafter and for purposes of subsection 3 of section 408.234 a
45 default charge shall be treated as a payment. No default charge may be collected
46 on an installment or a payment due which is paid in full within fifteen days of its
47 scheduled due date even though an earlier installment or payment or a default
48 charge on earlier installment or payments may not have been paid in full.

49 5. The lender shall, in addition to the charge authorized by subsection 4
50 of this section, be allowed to assess the borrower or other maker of refused
51 instrument the actual charge made by any institution for processing the
52 negotiable instrument, plus a handling fee of not more than twenty-five dollars;
53 and, if the contract or promissory note, signed by the borrower, provides for
54 attorney fees, and if it is necessary to bring suit, such attorney fees may not
55 exceed fifteen percent of the amount due and payable under such contract or
56 promissory note, together with any court costs assessed. The attorney fees shall
57 only be applicable where the contract or promissory note is referred for collection
58 to an attorney, and are not handled by a salaried employee of the holder of the
59 contract or note.

60 **6. No provision of this section shall be construed to prohibit the**
61 **sale of a deficiency waiver addendum, guaranteed asset protection, or**
62 **a similar product purchased as part of a loan transaction with**
63 **collateral and at the borrower's consent, provided the cost of the**
64 **product is disclosed in the loan contract, is reasonable, and the**
65 **requirements of section 408.380 are met.**

66 7. The lender may offer, sell, and finance automobile club
67 memberships, service contracts issued by providers registered under
68 sections 385.300 to 385.320, motor vehicle service contracts issued by
69 providers registered under sections 385.200 to 385.220, vehicle
70 protection devices issued by providers registered under sections
71 385.400 to 385.436, if such service contracts, motor vehicle service
72 contracts, and vehicle protection devices are required to be registered
73 by the department, and other plans and services that provide a benefit
74 to the borrower provided that:

75 (1) The cost of the product is disclosed separate from the loan
76 contract;

77 **(2) Lenders may not require the purchase of the plan as a**
78 **condition for approval of the loan;**

79 **(3) Purchasers of the plans shall be entitled to cancel the**
80 **transaction and receive a refund within thirty days of the purchase;**

81 **(4) Purchasers of the plans must provide, separate and apart**
82 **from the loan document, a written acknowledgment of their intent to**
83 **purchase the plan;**

84 **(5) No plan shall include reimbursement for a deductible on a**
85 **property insurance claim;**

86 **(6) All optional products other than the loan contract shall be**
87 **clearly identified as optional and not a required purchase; and**

88 **(7) Nothing in this subsection shall exempt such other plans and**
89 **services from any other requirements or laws governing such product.**

408.300. 1. Notwithstanding the provisions of any other law, the seller
2 or other holder under a retail time contract may charge, receive and collect a time
3 charge, which shall be in lieu of any interest charges, except such as may arise
4 under the terms of sections 408.250 to 408.370 after maturity of the time contract
5 and which charge shall not exceed the amount agreed to by the parties to the
6 retail time contract. The time charge under this subsection shall be computed on
7 the principal balance of each transaction, as determined under subsection 5 of
8 section 408.260, on contracts payable in successive monthly payments
9 substantially equal in amount from the date of the contract to the maturity of the
10 final payment, notwithstanding that the total time balance thereof is required to
11 be paid in one or more deferred payments, or if goods are delivered or services
12 performed more than ten days after that date, with the date of commencement of
13 delivery of goods or performance of services to the maturity of the final
14 payment. When a retail time contract provides for payment other than in
15 substantially equal successive monthly payments, the time charge shall not
16 exceed the amount which will provide the same return as is permitted on
17 substantially equal monthly payment contracts. Each day may be counted as
18 one-thirtieth of a month. In lieu of any other charge, a minimum time charge of
19 twelve dollars may be charged, received, and collected on each such contract.

20 2. Notwithstanding the provisions of any other law, the seller and
21 assignee under a retail charge agreement may charge, receive and collect a time
22 charge which shall not exceed the amount agreed to by the parties to the retail
23 charge agreement. The time charge under this subsection shall be computed on

24 an amount not exceeding the greater of either:

25 (1) The average daily balance of the account in the billing cycle for which
26 the charge is made, which is the sum of the amount unpaid each day during that
27 cycle divided by the number of days in that cycle; amount unpaid on a day is
28 determined by adding to any balance unpaid as of the beginning of that day all
29 purchases and other debits and deducting all payments and other credits made
30 or received as of that day; or

31 (2) The unpaid balance of the account on the last day of the billing cycle
32 after first deducting all payments, credits and refunds during the billing cycle;
33 or for all unpaid balances within a range of not in excess of ten dollars on the
34 basis of the median amount within such range, if as so computed such time
35 charge is applied to all unpaid balances within such range. A minimum time
36 charge not in excess of seventy cents per month may be charged, received and
37 collected.

38 3. The time charge shall include all charges incident to investigating and
39 making any retail time transaction. No fee, expense, delinquency charge,
40 collection charge, or other charge whatsoever, shall be charged, received, or
41 collected except as provided in sections 408.250 to 408.370.

42 **4. No provision of this section shall be construed to prohibit the**
43 **sale of a deficiency waiver addendum, guaranteed asset protection, or**
44 **a similar product purchased as part of a loan transaction with**
45 **collateral and at the borrower's consent, provided the cost of the**
46 **product is disclosed in the loan contract, is reasonable, and the**
47 **requirements of section 408.380 are met.**

408.380. 1. Notwithstanding any provision of sections 408.140,
2 **408.233, 408.300, or any other law to the contrary, no provision of such**
3 **sections shall be construed to prohibit the sale of a deficiency waiver**
4 **addendum, guaranteed asset protection, or a similar product purchased**
5 **as part of a loan transaction with collateral and at the borrower's**
6 **consent, provided the cost of the product is reasonable and is disclosed**
7 **in the loan contract. The borrower's consent to the purchase of the**
8 **deficiency waiver addendum, guaranteed asset protection, or a similar**
9 **product shall be in writing and acknowledge receipt of the required**
10 **disclosures by the borrower. The creditor shall retain a copy for the**
11 **file.**

12 **2. Each deficiency waiver addendum, guaranteed asset**

13 protection, or other similar product shall provide that in the event of
14 termination of the product prior to the scheduled maturity date of the
15 indebtedness, any refund of an amount paid by the debtor for such
16 product shall be paid or credited promptly to the person entitled
17 thereto; provided, however, that no refund of less than one dollar need
18 be made. The formula to be used in computing the refund shall be the
19 pro rata method.

20 3. Any debtor may cancel a deficiency waiver addendum,
21 guaranteed asset protection, or other similar product within fifteen
22 days of its purchase and shall receive a complete refund or credit of
23 premium. This right shall be set forth in the loan contract, or by
24 separate written disclosure. This right shall be disclosed at the time
25 the debt is incurred in ten-point type and in a manner reasonably
26 calculated to inform the debtor of this right.

✓

Bill

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