

SECOND REGULAR SESSION

# SENATE BILL NO. 786

90TH GENERAL ASSEMBLY

---

INTRODUCED BY SENATOR CLAY.

Read 1st time January 6, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3160S.011

---

## AN ACT

To amend chapter 408, RSMo, by adding thereto ten new sections relating to home loans, with a delayed effective date.

---

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

Section A. Chapter 408, RSMo, is amended by adding thereto ten new sections, to be known as sections 408.710, 408.713, 408.716, 408.719, 408.722, 408.725, 408.728, 408.731, 408.734 and 408.737, to read as follows:

**408.710. As used in sections 408.710 to 408.737, the following terms shall mean:**

(1) "Affiliate", any company that controls, is controlled by or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq., as amended from time to time;

(2) "Annual percentage rate", the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act, 15 U.S.C. 1601, et seq., and the regulations promulgated thereunder by the Federal Reserve Board, as said act and regulations are amended from time to time;

(3) "Bona fide loan discount points", loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions;

(4) "Flipping", the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the

**new and refinanced loans, the cost of the new loan, and the borrower's circumstances;**

**(5) "High-cost home loan", a home loan in which the terms of the loan meet one or more of the following thresholds:**

**(a) The annual percentage rate of the home loan at consummation exceeds by five or more percentage points the weekly average yield on United States Treasury securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board, as of the week immediately preceding the week in which the interest rate for the loan is established; or**

**(b) The home loan is a variable rate loan in which the annual percentage rate can reasonably be expected to increase beyond the threshold established in paragraph (a) of this subdivision; or**

**(c) Potential or scheduled increases in the annual percentage rate of the home loan are not directly tied to future increases in a widely-used federal or private market measurement that reflects the cost of borrowing money, such as the interest rate yield on U.S. Treasury securities, the federal funds rate, or the prime interest rate; or**

**(d) The total points and fees on the loan exceed:**

**a. Three percent of the total loan amount if the total loan amount is twenty thousand dollars or more;**

**b. Four percent of the total loan amount if the total loan amount is twenty thousand dollars or more and the loan is a purchase money loan guaranteed by the Federal Housing Administration or the Veterans Administration; or**

**c. The lesser of five percent of the total loan amount or eight hundred dollars, if the total loan amount is less than twenty thousand dollars. The following discount points shall be excluded from the calculation of the total points and fees:**

**(i) Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;**

**(ii) Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points the required net yield for a ninety-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;**

**(6) "Home loan", a loan, other than an open-end credit plan or a reverse mortgage transaction, where:**

**(a) The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association or some comparable entity designated by the division of finance;**

**(b) The borrower is a natural person;**

**(c) The debt is incurred by the borrower primarily for personal, family or household purposes; and**

**(d) The loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling;**

**(7) "Lender", any entity which originated more than five home loans within the past twelve-month period or acted as an intermediary between originators and borrowers on more than five home loans within the past twelve-month period;**

**(8) "Obligor", each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan;**

**(9) "Points and fees":**

**(a) All items required to be disclosed pursuant to sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;**

**(b) All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender, otherwise, the charges are not included within the meaning of the "points and fees";**

**(c) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction, not otherwise included in paragraphs (a) or (b) of this subdivision;**

**(d) "Points and fees" shall not include:**

**a. Taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing or satisfying a security interest; and**

**b. Fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys fees, if the**

borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under paragraph (a) of this subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Regulations are met;

(10) "Total loan amount", the same as the term "total loan amount" as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

**408.713. 1. No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any high-cost home loan.**

**2. No high-cost home loan may contain a payment schedule with regular periodic payments that result in an increase in the principal balance, a practice known as negative amortization.**

**3. No lender may knowingly or intentionally engage in the practice of "flipping" a home loan.**

**4. No lender may recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.**

**5. No lender may make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the dwelling which secures repayment of the loan.**

**6. No lender may charge a fee for a product or service where the product or service is not actually provided, or misrepresent the amount charged by or paid to a third party for a product or service.**

**7. No lender may make or cause to make, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a residential loan transaction including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product. A statement or representation is deceptive or misleading if it has the capacity or tendency to deceive or mislead a borrower or potential borrower. The director of the division of finance shall consider the following factors in deciding whether a statement or representation is deceptive or misleading: the overall impression that the statement or representation reasonably creates; the particular type of audience to which it is directed, and whether it may be reasonably comprehended**

by the segment of the public to which it is directed.

**8. No lender may compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a residential mortgage or is being offered as security according to an application for a residential mortgage loan.**

**9. No lender may finance, directly or indirectly, any credit life, credit disability, or credit unemployment insurance, or any other life or health insurance premiums through a home loan. Insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.**

**10. No high-cost home loan contract in which blanks are left to be filled in after the contract is signed shall be enforceable under the law.**

**408.716. If the discussions between the lender and the borrower on a home loan are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the loan translated into the language in which the discussions were conducted.**

**408.719. 1. No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.**

**2. No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.**

**3. No high-cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.**

**4. No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to increase the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.**

**5. A lender may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.**

**6. A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the United States Department of Housing**

and Urban Development that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

7. No high-cost loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process.

8. A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

**408.722. 1.** The provisions of section 408.719 shall apply to any person who in bad faith attempts to avoid its application by:

(1) Structuring a loan transaction as an open-end credit plan for the purpose and with the intent of evading sections 408.710 to 408.737 when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or

(2) Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section; or

(3) Any other such subterfuge.

2. A lender in a high-cost home loan who, when acting in good faith, fails to comply with section 408.719, will not be deemed to have violated this section if the lender establishes that either:

(1) Within thirty days of the loan closing and prior to the institution of any action, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower:

(a) Make the high-cost home loan satisfy the requirements of section 408.719; or

(b) Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

(2) The compliance failure was not intentional and resulted from the bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within sixty days after the discovery of the compliance failure and prior to the institution of any action pursuant to this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower:

(a) Make the high-cost home loan satisfy the requirements of section 408.719; or

(b) Change the terms of the loan in a manner beneficial to the borrower so that

the loan will no longer be considered a high-cost home loan subject to the provisions of section 408.719.

Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations pursuant to this section is not a bona fide error.

**408.725.** Lenders found in violation of sections 408.710 to 408.737 are subject to forfeiture of all principle and interest on all loans made in violation of sections 408.710 to 408.737.

**408.728.** A lender shall not make investments that are backed by home loans that violate section 408.713 or 408.719.

**408.731. 1.** Lenders that are exempt from the reporting requirements of 12 U.S.C. 2803 solely because the home purchase loans, including refinancings, that the lender originated in the preceding calendar year totaled less than ten percent of its total loan origination volume measured in dollars, thereby qualifying for an exemption pursuant to paragraph I.D. of Appendix A to 12 CFR part 203, shall be required to report to the director of the division of finance the same information that other lenders are required to report pursuant to 12 U.S.C. 2803(b) to the appropriate federal agency.

**2.** Lenders shall submit the information required pursuant to subsection 1 of this section in the format established by the United States Department of Housing and Urban Development pursuant to 12 U.S.C. 2803(h)(5).

**408.734. 1.** Lenders shall report to the director of the division of finance the average and median interest rates of mortgage loans and home improvement loans that they originate grouped according to the categories established pursuant to 12 U.S.C. 2803(b)(4), census tract, income level, racial characteristics, and gender.

**2.** In calculating the interest rate for variable-rate loans to fulfill the requirements of subsection 1 of this section, lenders shall use the average interest rate on the variable-rate loan for the twelve months of the reporting period established pursuant to 12 U.S.C. 2803(d), which is the calendar year.

**3.** Lenders shall submit the information required pursuant to subsection 1 of this section in a similar format to how the lender reports information to the appropriate federal agency pursuant to 12 U.S.C. 2803(h)(5) or to the division of finance pursuant to section 408.725.

**408.737.** The reporting requirements pursuant to sections 408.731 and 408.734 shall become effective one year following the effective date of this act.

Section B. The enactment of sections 408.710 through 408.737 shall become effective January 1, 2001.

Unofficial

Bill

Copy