

SECOND REGULAR SESSION

# SENATE BILL NO. 1147

91ST GENERAL ASSEMBLY

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INTRODUCED BY SENATOR KENNEDY.

Read 1st time February 12, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4664S.011

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## AN ACT

To amend chapter 408, RSMo, by adding thereto four new sections relating to high-cost home loans, with penalty provisions.

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

Section A. Chapter 408, RSMo, is amended by adding thereto four new sections, to be known as sections 408.710, 408.713, 408.716 and 408.719, to read as follows:

**408.710. As used in sections 408.710 to 408.734, the following terms 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. Section 1841 et seq., as amended;

(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. Section 1601, et seq., and the regulations promulgated thereunder by the Federal Reserve Board, as amended;

(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) "High-cost home loan", a home loan in which the terms of the loan exceed one or more of the thresholds as defined in this section;**

**(5) "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 by the Federal National Mortgage Association;**

**(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 will 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;**

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

**(a) All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended, 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, 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;**

**(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 paragraph (a) or (b) of this subdivision;**

**(d) All premiums financed by the lender, directly or indirectly, for any credit life, credit disability, or credit unemployment insurance, or any other life or health insurance; provided that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender; and**

**(e) All prepayment fees or penalties included in the loan documents;**

**Points and fees, shall not include 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 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 Federal Regulations are met;**

**(7) "Table-funded transaction", a settlement at which a mortgage loan is funded by an advance of loan funds and there is a subsequent assignment of the loan from the person identified as the lender in the loan documents to the person advancing the funds;**

**(8) "Threshold":**

**(a) The annual percentage rate of the home loan at consummation will exceed by more than eight 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. For determining the applicable annual percentage rate under this subdivision for variable rate loans, the rate shall be determined using the index rate at the time of loan closing and the maximum, fully indexed margin permitted at any time under the loan documents; or**

**(b) The total points and fees 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;**

**(9) "Total loan amount", the same as the term is 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.**

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

**2. No lender shall finance, directly or indirectly, any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums. No lender shall finance, directly or indirectly, any debt cancellation, suspension agreement, or contract fees. Insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the lender.**

**3. No lender shall knowingly or intentionally make 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. This subsection shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in**

**subdivision (8) of section 408.710.**

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

**408.716. 1. No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This subsection 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.**

**2. 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 subsection does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.**

**3. No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.**

**4. No high-cost home loan may contain a provision that increases the interest rate after default. This subsection 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.**

**5. 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.**

**6. 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.**

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

**8. 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, a state housing financing agency, or the lender's regulatory agency of jurisdiction that the borrower has received counseling on the advisability of the loan**

**transaction and the appropriate loan for the borrower.**

**9. As used in this subsection, the term "obligor" refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not 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. An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, exceed fifty percent of the obligor's monthly gross income.**

**10. In making a high-cost home loan, a lender may not directly or indirectly finance:**

- (1) Any charges payable to third parties;**
- (2) Any points and fees; or**
- (3) Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced.**

**11. A lender may not charge a borrower points, fees, or other charges in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender.**

**12. 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.

**408.719. 1. Except as provided in this section, the making of a high-cost home loan which violates any provisions of sections 408.710 to 408.719 is an unlawful merchandising practice pursuant to section 408.010.**

**2. The provisions of sections 408.710 to 408.719 shall apply to any person who in bad faith attempts to avoid the application of sections 408.710 to 408.719 by:**

**(1) The structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of sections 408.710 to 408.719 when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan;**

**(2) Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of sections 408.710 to 408.719; or**

**(3) Any other such subterfuge.**

**3. The attorney general or any party to a high-cost home loan may enforce the provisions of sections 408.710 to 408.719. The consumer protections and remedies provided by sections 408.710 to 408.719 are in addition to other consumer protections and remedies that may otherwise be available by law. A borrower prevailing in a claim under sections 408.710 to 408.719 shall be entitled to recover reasonable costs and attorneys' fees. Any person seeking damages or penalties under the provisions of sections 408.710 to 408.719 may recover damages under either sections 408.710 to 408.719 or any other state law, but not both.**

**4. A lender in a high-cost home loan who, when acting in good faith, fails to comply with sections 408.710 to 408.719, shall not be deemed to have violated sections 408.710 to 408.719 if the lender establishes that:**

**(1) Within thirty days of the loan closing and prior to the institution of any action under sections 408.710 to 408.719, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever necessary adjustments are made to the loan to make the high-cost home loan satisfy the requirements of sections 408.710 to 408.719 or 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 sections 408.710 to 408.719; or

(2) The compliance failure was not intentional and resulted from a 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 under sections 408.710 to 408.719 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 make the high-cost home loan satisfy the requirements of sections 408.710 to 408.719 or 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 sections 408.710 to 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 under sections 408.710 to 408.719 is not a bona fide error.

5. A lender shall not make investments that are backed by home loans that violate sections 408.710 to 408.719. Any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all claims and defenses with respect to the loan that the borrower could assert against the creditor or broker of the loan.

6. The provisions of sections 408.710 to 408.719 shall be severable, and if any phrase, clause, sentence, or provision is declared invalid or is preempted by federal law or regulation, the validity of the remainder of sections 408.710 to 408.719 shall not be affected. If any provision of sections 408.710 to 408.719 is declared inapplicable to any specific category, type, or kind of loan or points and fees, the provisions of sections 408.710 to 408.719 shall continue to apply with respect to all other loans and points and fees.

7. Sections 408.710 to 408.719 shall apply to all loans made or entered into after August 28, 2002.

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