

SECOND REGULAR SESSION

SENATE BILL NO. 1202

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 27, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5334S.011

AN ACT

To repeal sections 408.052, 408.140, and 408.233, RSMo, and to enact in lieu thereof three new sections relating to home and automobile security plans, with penalty provisions.

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

Section A. Sections 408.052, 408.140, and 408.233, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 408.052,
3 408.140, and 408.233, to read as follows:

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

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

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.

39 When fees charged need not be disclosed in the annual percentage rate required
40 by Title 15, U.S.C. Sections 1601, et seq., and regulations thereunder because
41 such fees are de minimis amounts or for other reasons, such fees need not be
42 included in the 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. Notwithstanding subsection 1 of this section, a lender may sell,**
50 **charge a fee for, or finance as part of a loan, automobile security plans**
51 **which provide the purchaser with certain services or items which may**
52 **include, but not be limited to, full or partial reimbursement of certain**
53 **costs incurred because of automobile related emergencies such as**

54 **towing, lost or stolen key service, or other access device protection;**
55 **automobile insurance deductibles; emergency transportation; stolen**
56 **automobile expenses; emergency treatment expenses; legal consultation**
57 **and referral; and similar or related services or items. Such automobile**
58 **security plans may also include travel discounts and other service**
59 **items.**

60 **5. Notwithstanding subsection 1 of this section, a lender may sell,**
61 **charge a fee for, or finance as part of a loan, home security plans which**
62 **provide the purchaser with certain services or items which may**
63 **include, but not be limited to, full or partial reimbursement of certain**
64 **costs incurred because of home emergencies and accidents such as**
65 **medical costs, insurance deductibles, or legal consultation and referral;**
66 **lost or stolen key service or other access device protection; and similar**
67 **or related services. Such home security plans may also include**
68 **pharmacy and vision discounts, travel discounts, and other service**
69 **items.**

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

76 **[5.] 7. Any lender who knowingly violates the provisions of this section**
77 **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 lender may sell, charge a fee for, or finance as part of an**
65 **extension of credit, automobile security plans which provide the**
66 **purchaser with certain services or items which may include, but not be**
67 **limited to, full or partial reimbursement of certain costs incurred**
68 **because of automobile related emergencies such as towing, lost or**
69 **stolen key service, or other access device protection; automobile**
70 **insurance deductibles; emergency transportation; stolen automobile**
71 **expenses; emergency treatment expenses; legal consultation and**
72 **referral; and similar or related services or items. Such automobile**
73 **security plans may also include travel discounts and other service**
74 **items;**

75 (12) **A lender may sell, charge a fee for, or finance as part of an**
76 **extension of credit, home security plans which provide the purchaser**
77 **with certain services or items which may include, but not be limited to,**
78 **full or partial reimbursement of certain costs incurred because of home**
79 **emergencies and accidents such as medical costs, insurance**
80 **deductibles, or legal consultation and referral; lost or stolen key**
81 **service or other access device protection; and similar or related**
82 **services. Such home security plans may also include pharmacy and**
83 **vision discounts, travel discounts, and other service items.**

84 2. Other provisions of law to the contrary notwithstanding, an open-end

85 credit contract under which a credit card is issued by a company, financial
86 institution, savings and loan or other credit issuing company whose credit card
87 operations are located in Missouri may charge an annual fee, provided that no
88 finance charge shall be assessed on new purchases other than cash advances if
89 such purchases are paid for within twenty-five days of the date of the periodic
90 statement therefor.

91 3. Notwithstanding any other provision of law to the contrary, in addition
92 to charges allowed pursuant to section 408.100, an open-end credit contract
93 provided by a company, financial institution, savings and loan or other credit
94 issuing company which is regulated pursuant to this chapter may charge an
95 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 division of insurance, and the insurance shall be obtained from an insurance
34 company duly authorized to conduct business in this state. Any person or entity
35 making second mortgage loans, or any of its employees, may be licensed to sell
36 insurance permitted in this section.

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

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

59 **6. Notwithstanding subsection 1 of this section, a lender may sell,**
60 **charge a fee for, or finance as part of a loan automobile security plans**
61 **which provide the purchaser with certain services or items which may**

62 include but not be limited to full or partial reimbursement of certain
63 costs incurred because of automobile related emergencies such as
64 towing, lost or stolen key service, or other access device protection;
65 automobile insurance deductibles; emergency transportation; stolen
66 automobile expenses; emergency treatment expenses; legal consultation
67 and referral; and similar or related services or items. Such automobile
68 security plans may also include travel discounts and other service
69 items.

70 7. Notwithstanding subsection 1 of this section, a lender may sell,
71 charge a fee for, or finance as part of a loan home security plans which
72 provide the purchaser with certain services or items which may
73 include, but not be limited to, full or partial reimbursement of certain
74 costs incurred because of home emergencies and accidents such as
75 medical costs, insurance deductibles, or legal consultation and referral;
76 lost or stolen key service or other access device protection; and similar
77 or related services. Such home security plans may also include
78 pharmacy and vision discounts, travel discounts, and other service
79 items.

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