FIRST REGULAR SESSION

[P E R F E C T E D**]**

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 243

95TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, February 18, 2009, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Senate Committee Substitute adopted February 25, 2009.

Taken up February 25, 2009. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

1410S.02P

AN ACT

To repeal section 408.140, 408.233, and 408.300, RSMo, and to enact in lieu thereof four new sections relating to the sale of deficiency waiver addendums and other similar products associated with certain loan transactions.

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

Section A. Sections 408.140, 408.233, and 408.300, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 408.094, 408.140, 408.233, and 408.300 to read as follows:

408.094. Nothing in this chapter shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's option, provided the cost of the product is disclosed in the loan contract.

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

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

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

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

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

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

(6) Reasonable towing costs and expenses of retaking, holding, preparing for sale, and selling any personal property in accordance with section 400.9, RSMo;

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

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

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

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

(11) A deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's option, provided the cost of the product is disclosed in the loan contract.

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

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

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

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

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

(2) Taxes;

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

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

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

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports;

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

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

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

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

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

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

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

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

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

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

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

6. No provision of this section shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's option, provided the cost of the product is disclosed in the loan contract.

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

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

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

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

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

4. No provision of this section shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's option, provided the cost of the product is disclosed in the loan contract.

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