

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 777
95TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, February 25, 2010, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

3576S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 408.052, 408.140, 408.233, and 408.300, RSMo, and to enact in lieu thereof five 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 408.052, 408.140, 408.233, and 408.300, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 408.052, 408.140, 408.233, 408.300, and 408.380, 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

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

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, home and auto security plans, and other plans and**
51 **services that provide a benefit to the borrower provided that:**

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

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

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

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

61 **(5) No plan shall include reimbursement for a deductible on a**
62 **property insurance claim; and**

63 **(6) All optional products other than the loan contract shall be**
64 **clearly identified as optional and not a required purchase.**

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

71 **[5.] 6.** Any lender who knowingly violates the provisions of this section
72 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) **A lender may offer, sell, and finance automobile club**
70 **memberships, home and auto security plans, and other plans and**
71 **services that provide a benefit to the borrower provided that:**

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

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

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

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

81 (e) **No plan shall include reimbursement for a deductible on a**
82 **property insurance claim; and**

83 (f) **All optional products other than the loan contract shall be**
84 **clearly identified as optional and not a required purchase.**

85 2. Other provisions of law to the contrary notwithstanding, an open-end
86 credit contract under which a credit card is issued by a company, financial
87 institution, savings and loan or other credit issuing company whose credit card

88 operations are located in Missouri may charge an annual fee, provided that no
89 finance charge shall be assessed on new purchases other than cash advances if
90 such purchases are paid for within twenty-five days of the date of the periodic
91 statement therefor.

92 3. Notwithstanding any other provision of law to the contrary, in addition
93 to charges allowed pursuant to section 408.100, an open-end credit contract
94 provided by a company, financial institution, savings and loan or other credit
95 issuing company which is regulated pursuant to this chapter may charge an
96 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] fees not to exceed **in total** five
18 percent of the principal which may be used by the lender to reduce the rate on a
19 second 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, home and auto security plans, and other plans and**
68 **services that provide a benefit to the borrower provided:**

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

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

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

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

78 **(5) No plan shall include reimbursement for a deductible on a**
79 **property insurance claim; and**

80 **(6) All optional products other than the loan contract shall be**
81 **clearly identified as optional and not a required purchase.**

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.

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