

SENATE BILL NO. 835

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

3810S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 408.035, 408.140, and 442.210, RSMo, and to enact in lieu thereof three new sections relating to financial instruments.

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

Section A. Sections 408.035, 408.140, and 442.210, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 408.035, 408.140, and 442.210, to read as
4 follows:

408.035. Notwithstanding the provisions of any other
2 law to the contrary, it is lawful for the parties to agree
3 in writing to any rate of interest, fees, and other terms
4 and conditions in connection with any:

5 (1) Loan to a corporation, general partnership,
6 limited partnership or limited liability company;

7 (2) Extension of credit primarily for agricultural,
8 business, or commercial purposes;

9 (3) Real estate loan, other than residential real
10 estate loans [and loans of less than five thousand dollars
11 secured by real estate used for an agricultural activity]; or

12 (4) Loan of five thousand dollars or more secured
13 solely by certificates of stock, bonds, bills of exchange,
14 certificates of deposit, warehouse receipts, or bills of
15 lading pledged as collateral for the repayment of such loans.

408.140. 1. No further or other charge or amount
2 whatsoever shall be directly or indirectly charged,

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

3 contracted for or received for interest, service charges or
4 other fees as an incident to any such extension of credit
5 except as provided and regulated by sections 367.100 to
6 367.200 and except:

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

17 (2) The lawful fees actually and necessarily paid out
18 by the lender to any public officer for filing, recording,
19 or releasing in any public office any instrument securing
20 the loan, and reasonable and bona fide third-party fees
21 incurred for remote or electronic filing, which fees may be
22 collected when the loan is made or at any time thereafter;
23 however, premiums for insurance in lieu of perfecting a
24 security interest required by the lender may be charged if
25 the premium does not exceed the fees which would otherwise
26 be payable;

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

34 dollars or less installment in default for a period of not
35 less than fifteen days shall not exceed five dollars;

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

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

50 (6) Reasonable towing costs and expenses of retaking,
51 holding, preparing for sale, and selling any personal
52 property in accordance with the uniform commercial code -
53 secured transactions, sections 400.9-101 to 400.9-809;

54 (7) A reasonable service fee not to exceed the amount
55 permitted under subdivision (2) of subsection 6 of section
56 570.120 for any check, draft, order, or like instrument that
57 is returned unpaid by a financial institution, plus an
58 amount equal to the actual fees charged by the financial
59 institution for each check, draft, order, or like instrument
60 returned unpaid;

61 (8) If the contract or promissory note, signed by the
62 borrower, provides for attorney fees, and if it is necessary
63 to bring suit, such attorney fees may not exceed fifteen
64 percent of the amount due and payable under such contract or
65 promissory note, together with any court costs assessed.

66 The attorney fees shall only be applicable where the
67 contract or promissory note is referred for collection to an
68 attorney, and is not handled by a salaried employee of the
69 holder of the contract;

70 (9) If the open-end credit contract is tied to a
71 transaction account in a depository institution, such
72 account is in the institution's assets and such contract
73 provides for loans of thirty-one days or longer which are
74 "open-end credit", as such term is defined in the federal
75 Consumer Credit Protection Act and regulations thereunder,
76 the creditor may charge a credit advance fee of up to the
77 lesser of seventy-five dollars or ten percent of the credit
78 advanced from time to time from the line of credit; such
79 credit advance fee may be added to the open-end credit
80 outstanding along with any interest, and shall not be
81 considered the unlawful compounding of interest as specified
82 under section 408.120;

83 (10) A deficiency waiver addendum, guaranteed asset
84 protection, or a similar product purchased as part of a loan
85 transaction with collateral and at the borrower's consent,
86 provided the cost of the product is disclosed in the loan
87 contract, is reasonable, and the requirements of section
88 408.380 are met;

89 (11) A convenience fee for payments using an
90 alternative payment channel that accepts a debit or credit
91 card not present transaction, nonface-to-face payment,
92 provided that:

93 (a) The person making the payment is notified of the
94 convenience fee; and

95 (b) The fee is fixed or flat, except that the fee may
96 vary based upon method of payment used;

97 **(12) A charge for the cost for a credit report or**
98 **reports.**

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

108 3. Notwithstanding any other provision of law to the
109 contrary, in addition to charges allowed pursuant to section
110 408.100, an open-end credit contract provided by a company,
111 financial institution, savings and loan or other credit
112 issuing company which is regulated pursuant to this chapter
113 may charge an annual fee not to exceed fifty dollars.

 442.210. 1. The certificate of acknowledgment shall
2 state the act of acknowledgment, and that the person making
3 the same was personally known to at least one judge of the
4 court, or to the officer granting the certificate, to be the
5 person whose name is subscribed to the instrument as a party
6 thereto, or was proved to be such by at least two witnesses,
7 whose names and places of residence shall be inserted in the
8 certificate; and the following forms of acknowledgment may
9 be used in the case of conveyances or other written
10 instruments affecting real estate; and any acknowledgment so
11 taken and certificate shall be sufficient to satisfy all
12 requirements of law relating to the execution or recording
13 of such instruments (begin in all cases by a caption,
14 specifying the state and place where the acknowledgment is
15 taken):

16 (1) In case of natural persons acting in their own
17 right

18 On this _____ day of _____, 20_____,
19 before me personally appeared A B (or A B and C
20 D), to me known to be the person (or persons)
21 described in and who executed the foregoing
22 instrument, and acknowledged that he (or they)
23 executed the same as his (or their) free act and
24 deed.

25 (2) In the case of natural persons acting by attorney

26 On this _____ day of _____, 20_____,
27 before me personally appeared A B, to me known
28 to be the person who executed the foregoing
29 instrument in behalf of C D, and acknowledged
30 that he executed the same as the free act and
31 deed of C D.

32 (3) In the case of corporations or joint stock
33 associations

34 On this _____ day of _____, 20_____,
35 before me appeared A B, to me personally known,
36 who, being by me duly sworn (or affirmed) did
37 say that he is the president (or other officer
38 or agent of the corporation or association), of
39 (describing the corporation or association), and
40 that the seal affixed to foregoing instrument is
41 the corporate seal of said corporation (or
42 association), and that said instrument was
43 signed and sealed in behalf of said corporation
44 (or association) by authority of its board of
45 directors (or trustees), and said A B
46 acknowledged said instrument to be the free act
47 and deed of said corporation (or association).

48 2. In case the corporation or association has no
49 corporate seal, omit the words "the seal affixed to said
50 instrument is the corporate seal of said corporation (or
51 association), and that", and add at the end of the affidavit
52 clause the words "and that said corporation (or association)
53 has no corporate seal".

54 3. (In all cases add signature and title of the
55 officer taking the acknowledgment.)

56 [4. When a married woman unites with her husband in
57 the execution of any such instrument, and acknowledges the
58 same in one of the forms above sanctioned, she shall be
59 described in the acknowledgment as his wife, but in all
60 other respects her acknowledgment shall be taken and
61 certified as if she were sole; and no separate examination
62 of a married woman in respect to the execution of any
63 release or dower, or other instrument affecting real estate,
64 shall be required.]

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