

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

# SENATE BILL NO. 792

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MATHEWSON.

Offered April 9, 1998.

Senate Substitute adopted, April 9, 1998.

Taken up for Perfection April 9, 1998. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

S3536.02P

## AN ACT

To repeal sections 408.100, 408.200, 408.232 and 408.233, RSMo 1994, and section 408.140, RSMo Supp. 1997, relating to financial transactions, and to enact in lieu thereof six new sections relating to the same subject.

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

Section A. Sections 408.100, 408.200, 408.232 and 408.233, RSMo 1994, and section 408.140, RSMo Supp. 1997, are repealed and six new sections enacted in lieu thereof, to be known as sections 367.185, 408.100, 408.140, 408.200, 408.232 and 408.233, to read as follows:

**367.185. 1. Every nondepository financial institution licensed under sections 367.100 to 367.215 and otherwise defined as a person in section 367.100 shall comply with the provisions of this section.**

**2. In addition to any disclosures otherwise provided by law, such person soliciting loans using facsimile or negotiable checks shall disclose the following:**

**"THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT."**

**This notice shall be printed in not less than ten point bold type and shall appear directly on the face of the check.**

**3. When such persons make loans secured by real estate as otherwise**

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

**provided by law, such persons shall include in a printed portion of the contract the following notice:**

**"WARNING TO BORROWER: DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT."**

**This notice shall be printed in not less than 10-point bold type.**

**4. When making or negotiating loans, such person shall take into consideration in determining the size and duration of a loan contract the financial ability of borrowers to reasonably repay the loan in the time and manner as specified in the loan contract.**

**5. Such person shall post in a conspicuous location in each licensed office the maximum rates and fees that such person is currently charging on any loans made.**

408.100. This section shall apply to all loans which are not made as permitted by other laws of this state except that it shall not apply to loans which are secured by a lien on real estate, nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations. On any loan subject to this section, any person, firm, or corporation may charge, contract for and receive interest [in any manner at rates which shall not exceed the following:

(1) On so much of the unpaid principal balance as does not exceed twelve hundred dollars, two and two hundred eighty thousandths percent per month;

(2) On so much of the unpaid principal balance as exceeds twelve hundred dollars, one and sixty-seven one-hundredths percent per month] **on the unpaid principal balance at rates agreed to by the parties.**

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 [two] **five** percent of the principal amount loaned [or twenty-five dollars, whichever is less, per loan made] **not to exceed fifty 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 twenty-five dollars, whichever is less; except that, a minimum charge of ten dollars may be made. 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) 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[, and section 379.405, 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;

(5) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than fifteen dollars;

(6) 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.

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.**

408.200. [1. Except as provided in subsections 2 and 3,] No lender shall permit any borrower to be indebted to such lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving more interest on the multiple notes or contracts than would have been permissible on a single note or contract entered into in accordance with section 408.100. [It shall be lawful for a lender to lend at the same or different times to the same borrower twelve hundred dollars or less under and at the rates permitted by section 408.100 and additional amounts at not more than one and sixty-seven one-hundredths percent per month even though such additional amounts bring the aggregate amount outstanding to an amount in excess of twelve hundred dollars and whether such loan or loans be evidenced by one or more than one note or loan contract. When such aggregate principal amount outstanding exceeds twelve hundred dollars and is evidenced by one note or loan contract, it shall be treated as one loan and interest may be computed at the rates permitted under section 408.100 on that part of the unpaid principal balance of the total indebtedness not exceeding twelve hundred dollars and at no more than one and sixty-seven one-hundredths percent per month on any remainder of such unpaid principal balance and the provisions of sections 408.120 to 408.180 shall apply to the full amount of the note or loan contract.

2. As used in subsection 3:

(1) "Closed end credit" shall mean loans other than open end credit;

(2) "Credit card" shall mean a credit device defined as such in the federal Consumer Credit Protection Act and regulations thereunder, except that as used in subsection 3 the term shall be limited to credit cards which permit the holder to purchase goods and services upon presentation to third parties, whether or not the credit card also permits the holder to obtain loans of any other type;

(3) "Open end credit" shall mean loans defined as such in the federal Consumer Credit Protection Act and regulations thereunder.

3. For the purpose of computing the interest allowed on any loan contract of the following types, each note or loan contract shall be considered separately without regard to any other loan to the same borrower, the provisions of subsection 1 notwithstanding:

(1) Closed end credit contracts evidencing loans in the principal amount of two thousand five hundred dollars or more for the purchase of goods or services pursuant to a single contract of purchase in an amount equal to or exceeding the amount of the loan;

(2) Open end credit contracts other than contracts under which a credit card has been issued, provided that if a lender has more than one such contract with any borrower

all such contracts shall be considered together (but without regard to contracts of any other type) for purposes of computing the interest allowed on loans made thereunder;

(3) Open end credit contracts under which a credit card has been issued; provided, however, interest on any such contract shall not exceed twenty-two percent per annum on that part of the unpaid balance which is not in excess of one thousand dollars and ten percent per annum on the remainder.

4. Subsection 3 shall not apply to any transaction in which a single extension of credit is allocated to two or more of the categories therein described for the purpose or with the result of contracting for or receiving a higher rate of interest than would have been permitted if the loan had been made under subsection 1.]

408.232. 1. With respect to a second mortgage loan, any person, firm or corporation may charge, contract for, and receive interest in any manner at [a rate which shall not exceed one and sixty-seven hundredths percent per month,] **rates agreed to by the parties** computed on unpaid balances of the principal for the time actually outstanding.

2. The term of the loan, for purposes of this section, commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth of a month and one-three-hundred-sixtieth of a year. When a second mortgage loan contract provides for monthly installments, the first installment may be payable at any time within one month and fifteen days of the date of the loan.

3. For revolving loans, charges may be computed at a daily rate of one-thirtieth of the monthly rate on actual daily balances or at a monthly rate on the average daily balance in each monthly billing cycle.

4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of interest charged is lawful without regard to the rates permitted in subsection 1 of this section.

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 [two] **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 division of insurance, 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 [of the installment] or twenty-five dollars, whichever is less. 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 [an] 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 fifteen 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.

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