

SECOND REGULAR SESSION

HOUSE BILL NO. 2096

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COX.

Read 1st time February 12, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4889L.02I

AN ACT

To repeal sections 365.100, 367.512, 367.524, and 408.140, RSMo, and to enact in lieu thereof four new sections relating to consumer credit protection.

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

Section A. Sections 365.100, 367.512, 367.524, and 408.140, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 365.100, 367.512, 367.524,
3 and 408.140, to read as follows:

365.100. [For contracts entered into on or after August 28, 2005,] If the contract so
2 provides, the holder thereof may charge, finance, and collect:

3 (1) A charge for late payment on each installment or minimum payment in default for
4 a period of not less than fifteen days in an amount not to exceed five percent of each installment
5 due or the minimum payment due or twenty-five dollars, whichever is less; except that, a
6 minimum charge of ten dollars may be made, or when the installment is for twenty-five dollars
7 or less, a charge for late payment for a period of not less than fifteen days shall not exceed five
8 dollars, provided, however, that a minimum charge of one dollar may be made;
9 (2) Interest on each delinquent payment at a rate which shall not exceed the highest
10 lawful contract rate. In addition to such charge, the contract may provide for the payment of
11 attorney fees not exceeding fifteen percent of the amount due and payable under the contract
12 where the contract is referred for collection to any attorney not a salaried employee of the holder,
13 plus court costs;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (3) A dishonored or insufficient funds check fee equal to such fee as provided in section
15 [408.653] **408.140**, RSMo, in addition to fees charged by a bank for each check, draft, order or
16 like instrument which is returned unpaid; and

17 (4) All other reasonable expenses incurred in the origination, servicing, and collection
18 of the amount due under the contract.

367.512. 1. Every title loan, and each extension or renewal of such title loan, shall be
2 in writing, signed by the borrower and shall provide that:

3 (1) The title lender agrees to make a loan to the borrower, and the borrower agrees to
4 give the title lender a security interest in unencumbered titled personal property;

5 (2) Whether the borrower consents to the title lender keeping possession of the certificate
6 of title;

7 (3) The borrower shall have the right to redeem the certificate of title by repaying the
8 loan in full and by complying with the title loan agreement which [may] **shall** be for [any agreed
9 period of time] **a term of** not less than thirty **but not more than forty-five** days;

10 (4) The title lender shall renew the title loan agreement upon the borrower's written
11 request and the payment by the borrower of any interest due at the time of such renewal.
12 However, upon the third renewal [of any title loan agreement,] and any subsequent renewal, the
13 borrower shall reduce the principal by **an amount equal to** ten percent [until such loan is paid
14 in full] **of the highest principal balance of the loan at any time during its original term or**
15 **any renewal term until paid in full;**

16 (5) When the loan is satisfied, the title lender shall release its lien and return the title to
17 the borrower;

18 (6) If the borrower defaults, the title lender shall be allowed to take possession of the
19 titled personal property after compliance with chapter 400, RSMo, sections 408.551 to 408.557,
20 RSMo, and sections 408.560 to 408.562, RSMo;

21 (7) Upon obtaining possession of the titled personal property in accordance with chapter
22 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo, the
23 title lender shall be authorized to sell the titled personal property in accordance with chapter 400,
24 RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo, and to
25 convey to the buyer thereof good title thereto.

26 2. Any borrower who obtains a title loan under false pretenses by hiding or not disclosing
27 the existence of a valid prior lien or security interest affecting the titled personal property shall
28 be personally liable to the title lender for the full amount stated in the title loan agreement.

367.524. 1. Every title lender shall keep a consecutively numbered record of each title
2 loan agreement executed, which number shall be placed on the corresponding title loan
3 agreement itself. Such record shall include the following:

4 (1) A clear and accurate description of the titled personal property, including its vehicle
5 identification or serial number, license plate number, year, make, model, type, and color;
6 (2) The date of the title loan agreement;
7 (3) The amount of the loan;
8 (4) The date of maturity of the loan; and
9 (5) The name, date of birth, [Social Security number,] residential address, and [the] type
10 of photo identification of the borrower.

11 2. The title lender shall photocopy the photo identification of the borrower or shall take
12 an instant photograph of the borrower, and shall attach such photocopy or photograph to the
13 lender's copy of the title loan agreement and all renewals.

14 3. The borrower shall sign the title loan agreement and shall be provided with a copy of
15 such agreement. The title lender, or the lender's employee or agent shall also sign the title loan
16 agreement. The title lender shall provide each customer with and retain a photocopy of the
17 pledged title at the time the note is signed.

18 4. The title lender shall keep the numbered records and copies of its title loan
19 agreements, including a copy of the notice required pursuant to subsection 1 of section 367.525,
20 for a period of no less than two years from the date of the closing of the last transaction reflected
21 therein. A title lender who ceases engaging in the business of making title loans shall keep these
22 records for at least two years from the date the lender ceased engaging in the business. A title
23 lender must notify the director to request an examination at least ten days before ceasing
24 business.

25 5. The records required by this section shall be made available for inspection by any
26 employee of the division of finance upon request during ordinary business hours without warrant
27 or court order.

408.140. 1. No further or other charge or amount whatsoever shall be directly or
2 indirectly charged, contracted for or received for interest, service charges or other fees as an
3 incident to any such extension of credit except as provided and regulated by sections 367.100 to
4 367.200, RSMo, and except:

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

11 (2) The lawful fees actually and necessarily paid out by the lender to any public officer
12 for filing, recording, or releasing in any public office any instrument securing the loan, which

13 fees may be collected when the loan is made or at any time thereafter; however, premiums for
14 insurance in lieu of perfecting a security interest required by the lender may be charged if the
15 premium does not exceed the fees which would otherwise be payable;

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

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

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

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

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

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

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

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

56 **(10) Provided the debtor agrees in writing, a depository institution may collect a**
57 **charge or fee made for a debt cancellation or debt suspension agreement, including a**
58 **deficiency waiver addendum or guaranteed asset protection in connection with a loan.**

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

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

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