

FIRST REGULAR SESSION

HOUSE BILL NO. 435

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JONES (89) (Sponsor), JONES (117), GRISAMORE, BIVINS,
SCHOELLER, EMERY, SILVEY AND SMITH (150) (Co-sponsors).

0833L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 408.052, 408.140, and 408.233, RSMo, and to enact in lieu thereof three new sections relating to lenders, with a penalty provision.

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

Section A. Sections 408.052, 408.140, and 408.233, RSMo, are repealed and three new
2 sections enacted in lieu thereof, to be known as sections 408.052, 408.140, and 408.233, to read
3 as follows:

408.052. 1. No lender shall charge, require or receive, on any residential real estate loan,
2 any points or other fees of any nature whatsoever, excepting insurance, including insurance for
3 involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer
4 or the seller or any other person, except that the lender may charge bona fide expenses paid by
5 the lender to any other person or entity except to an officer, employee, or director of the lender
6 or to any business in which any officer, employee or director of the lender owns any substantial
7 interest for services actually performed in connection with a loan. In addition to the foregoing,
8 if the loan is for the construction, repair, or improvement of residential real estate, the lender may
9 charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the
10 proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for
11 a default charge for any installment not paid in full within fifteen days of its scheduled due date.
12 The restrictions of this section shall not apply:

13 (1) To any loan which is insured or covered by guarantee made by any department,
14 board, bureau, commission, agency or establishment of the United States, pursuant to the
15 authority of any act of Congress heretofore or hereafter adopted; and

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.

16 (2) To any loan for which an offer or commitment or agreement to purchase has been
17 received from and which is made with the intention of reselling such loan to the Federal Housing
18 Administration, Farmers Home Administration, Federal National Mortgage Association,
19 Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or to
20 any successor to the above-mentioned organizations, to any other state or federal governmental
21 or quasi-governmental organization; and

22 (3) Provided that the 1994 reenactment of this section shall not be construed to be action
23 taken in accordance with Public Law 96-221, Section 501(b)(4). Any points or fees received in
24 excess of those permitted under this section shall be returned to the person from whom received
25 upon demand.

26 2. Notwithstanding the language in subsection 1 of this section, a lender may pay to an
27 officer, employee or director of the lender, or to any business in which such person has an
28 interest, bona fide fees for services actually and necessarily performed in good faith in
29 connection with a residential real estate loan, provided:

30 (1) Such services are individually listed by amount and payee on the loan-closing
31 documents; and

32 (2) Such lender may use the preemption of Public Law 96-221, Section 501 with respect
33 to the residential real estate loan in question. When fees charged need not be disclosed in the
34 annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations
35 thereunder because such fees are de minimis amounts or for other reasons, such fees need not
36 be included in the annual percentage rate for state examination purposes.

37 3. The lender may charge and collect bona fide fees for services actually and necessarily
38 performed in good faith in connection with a residential real estate loan as provided in subsection
39 2 of this section; however, the lender's board of directors shall determine whether such bona fide
40 fees shall be paid to the lender or businesses related to the lender in subsection 2 of this section,
41 but may allow current contractual relationships to continue for up to two years.

42 4. **The lender may offer, sell, and finance service contracts, home security plans,**
43 **auto club memberships, and related plans and services.**

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

49 [5.] 6. Any lender who knowingly violates the provisions of this section is guilty of a
50 class B misdemeanor.

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;

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] **provided** in section 408.120;

56 **(11) The lender may offer, sell, and finance service contracts, home security plans,**
57 **auto club memberships, and related plans and services.**

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

64 3. Notwithstanding any other provision of law to the contrary, in addition to charges
65 allowed pursuant to section 408.100, an open-end credit contract provided by a company,
66 financial institution, savings and loan or other credit issuing company which is regulated
67 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
2 indirectly charged, contracted for or received in connection with any second mortgage loan,
3 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

39 installment or payment or a default charge on earlier installment or payments may not have been
40 paid in full.

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

50 **6. The lender may offer, sell, and finance service contracts, home security plans,**
51 **auto club memberships, and related plans and services.**

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