

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1446
95TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 28, 2010, with recommendation that the Senate Committee Substitute do pass.

3372S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 67.085, 339.503, 362.111, 408.052, 408.140, 408.233, 408.300, and 475.190, RSMo, and to enact in lieu thereof nine new sections relating to financial transactions, with penalty provisions.

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

Section A. Sections 67.085, 339.503, 362.111, 408.052, 408.140, 408.233, 408.300, and 475.190, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 67.085, 339.503, 362.111, 408.052, 408.140, 408.233, 408.300, 408.380, and 475.190, to read as follows:

67.085. 1. Notwithstanding any law to the contrary, any political subdivision of the state and any other public entity in Missouri may invest funds of the public entity not immediately needed for the purpose to which such funds or any of them may be applicable provided each public entity meets the requirements for separate deposit insurance of public funds permitted by federal deposit insurance and in accordance with the following conditions:

(1) The public funds are invested through a financial institution which has been selected as a depository of the funds in accordance with the applicable provisions of the statutes of Missouri relating to the selection of depositories and such financial institution enters into a written agreement with the public entity;

(2) The selected financial institution arranges for the deposit of the public funds in certificates of deposit in one or more financial institutions wherever located in the United States, for the account of the public entity;

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

14 (3) Each such certificate of deposit issued by financial institutions as provided
15 in subdivision (2) of this section is insured by federal deposit insurance for one hundred
16 percent of the principal and accrued interest of the certificate of deposit;

17 (4) The selected financial institution acts as custodian for the public entity with
18 respect to the certificate of deposit issued for its account; and

19 (5) At the same time that the public funds are deposited and the certificates of
20 deposit are issued, the selected financial institution receives an amount of deposits from
21 customers of other financial institutions equal to the amount of the public funds initially
22 invested by the public entity through the selected financial institution.

23 **2. Notwithstanding any law to the contrary, any political subdivision**
24 **of the state and any other public entity in Missouri may invest funds of the**
25 **public entity not immediately needed for the purpose to which such funds or**
26 **any of them may be applicable provided each public entity meets the**
27 **requirements for separate deposit insurance of public funds permitted by**
28 **federal deposit insurance and in accordance with the following conditions:**

29 (1) The public entity deposits the funds in a deposit account in a
30 financial institution which has been selected as a depository of the funds in
31 accordance with the applicable provisions of the statutes of Missouri relating
32 to the selection of depositories and authorizes the financial institution to
33 arrange for the redeposit of the money through a deposit placement program
34 that meets the conditions set forth in subdivisions (2) to (5) of this subsection;

35 (2) On or after the date that the public entity funds are received, the
36 selected financial institution:

37 (a) Arranges for the redeposit of the funds into deposit accounts in one
38 or more financial institutions wherever located in the United States; and

39 (b) Serves as custodian for the public entity with respect to the funds
40 redeposited into such accounts;

41 (3) Public entity funds deposited in a selected financial institution in
42 accordance with this subsection and held at the close of business in the
43 selected financial institution in excess of the amount insured by the Federal
44 Deposit Insurance Corporation or the National Credit Union Share Insurance
45 Fund shall be secured in accordance with law;

46 (4) The full amount of the public entity funds redeposited by the
47 selected financial institution into deposit accounts in financial institutions
48 (plus accrued interest, if any) shall be insured by the Federal Deposit
49 Insurance Corporation or the National Credit Union Share Insurance Fund;

50 (5) On the same date that the funds of the public entity are redeposited

51 **under this subsection, the selected financial institution receives an amount**
52 **of deposits from customers of other financial institutions under the deposit**
53 **placement program that are equal to the amount of the public entity's funds**
54 **redeposited by the selected financial institution.**

339.503. As used in sections 339.500 to 339.549, the following words and phrases
2 mean, unless the context clearly indicates otherwise:

3 (1) "Appraisal" or "real estate appraisal", an objective analysis, evaluation,
4 opinion, or conclusion relating to the nature, quality, value or utility of specified
5 interests in, or aspects of, identified real estate. An appraisal may be classified by
6 subject matter into either a valuation or an analysis;

7 (2) "Appraisal assignment", an engagement for which a person is employed or
8 retained to act as a disinterested third party in rendering an objective appraisal;

9 (3) "Appraisal foundation", the organization of the same name that was
10 incorporated as an Illinois not-for-profit corporation on November 20, 1987, whose
11 operative boards are the appraisal standards board and the appraiser qualifications
12 board;

13 (4) "Appraisal report", any communication, written or oral, of an appraisal. The
14 purpose of an appraisal is immaterial, therefore valuation reports, real estate counseling
15 reports, real estate tax counseling reports, real estate offering memoranda, mortgage
16 banking offers, highest and best use studies, market demand and economic feasibility
17 studies and all other reports communicating an appraisal analysis, opinion or conclusion
18 are appraisal reports, regardless of title;

19 (5) "Appraisal standards board (ASB)", the independent board of the appraisal
20 foundation which promulgates the generally accepted standards of the appraisal
21 profession and the uniform standards of professional appraisal practices;

22 (6) "Appraiser qualifications board (AQB)", the independent board of the
23 appraisal foundation which establishes minimum experience, education and examination
24 criteria for state licensing of appraisers;

25 (7) "Boat dock", a structure for loading and unloading boats and connecting real
26 property to water, public or private. A boat dock is real property and has riparian
27 rights, provided:

28 (a) The lender includes the boat dock as a fixture both in the lender's deed of
29 trust and a uniform commercial code fixture filing under section 400.9-502, RSMo;

30 (b) The boat dock is attached to the real property by steel cable, bar, or chain
31 that is permanently imbedded in concrete or rock, and otherwise securely attached to the
32 dock; and

33 (c) The owner of the dock has riparian rights by means of real estate rights
34 bordering the body of water, including such rights by license, grant, or other means
35 allowing access to the body of water, which access may be seasonal because the water
36 may be reduced for electric power production or flood control;

37 (8) **"Boat slip" or "watercraft slip", a defined area of water, including the**
38 **riparian rights to use such area, whether by grant, lease, or license, in**
39 **accordance with all applicable laws and regulations, which is a part of a boat**
40 **dock serving a common interest community, including by way of example and**
41 **not of limitation condominiums and villas; and the exclusive right to such use**
42 **being allocated as a limited common element or being assigned to an owner**
43 **of real estate in the common interest community in which the boat dock is**
44 **located, whether by grant, lease, or otherwise. The rights of the real estate**
45 **owner in such slip are included as collateral in any deed of trust and uniform**
46 **commercial code filings of a lender, if any, taking a security interest in the**
47 **owner's real estate;**

48 (9) "Broker price opinion", an opinion of value, prepared by a real estate licensee
49 for a fee, that includes, but is not limited to, analysis of competing properties,
50 comparable sold properties, recommended repairs and costs or suggested marketing
51 techniques. A broker price opinion is not an appraisal and shall specifically state it is
52 not an appraisal;

53 [(9)] (10) "Certificate", the document issued by the Missouri real estate
54 appraisers commission evidencing that the person named therein has satisfied the
55 requirements for certification as a state-certified real estate appraiser and bearing a
56 certificate number assigned by the commission;

57 [(10)] (11) "Certificate holder", a person certified by the commission pursuant
58 to the provisions of sections 339.500 to 339.549;

59 [(11)] (12) "Certified appraisal report", an appraisal prepared or signed by a
60 state-certified real estate appraiser. A certified appraisal report represents to the public
61 that it meets the appraisal standards defined in sections 339.500 to 339.549;

62 [(12)] (13) "Commission", the Missouri real estate appraisers commission,
63 created in section 339.507;

64 [(13)] (14) "Comparative market analysis", the analysis of sales of similar
65 recently sold properties in order to derive an indication of the probable sales price of a
66 particular property undertaken by a licensed real estate broker or agent, for his or her
67 principal. A comparative market analysis is not an appraisal and shall specifically state
68 it is not an appraisal;

69 [(14)] **(15)** "Disinterested third party" shall not exclude any state-certified real
70 estate appraiser or state-licensed real estate appraiser employed or retained by any
71 bank, savings association, credit union, mortgage banker or other lender to perform
72 appraisal assignments, provided that the appraisal assignments are rendered with
73 respect to loans to be extended by the bank, savings association, credit union, mortgage
74 banker or other lender, and provided further that the state-certified real estate appraiser
75 or state-licensed real estate appraiser is not requested or required to report a
76 predetermined analysis or opinion of value;

77 [(15)] **(16)** "License" or "licensure", a license or licensure issued pursuant to the
78 provisions of sections 339.500 to 339.549 evidencing that the person named therein has
79 satisfied the requirements for licensure as a state-licensed real estate appraiser and
80 bearing a license number assigned by the commission;

81 [(16)] **(17)** "Real estate", an identified parcel or tract of land, including
82 improvements, if any;

83 [(17)] **(18)** "Real estate appraiser" or "appraiser", a person who for a fee or
84 valuable consideration develops and communicates real estate appraisals or otherwise
85 gives an opinion of the value of real estate or any interest therein;

86 [(18)] **(19)** "Real estate appraising", the practice of developing and
87 communicating real estate appraisals;

88 [(19)] **(20)** "Real property", the interests, benefits and rights inherent in the
89 ownership of real estate;

90 [(20)] **(21)** "Residential real estate", any parcel of real estate, improved or
91 unimproved, that is primarily residential in nature and that includes or is intended to
92 include a residential structure containing not more than four dwelling units and no other
93 improvements except those which are typical residential improvements that support the
94 residential use for the location and property type. A residential unit is a condominium,
95 town house or cooperative complex, or a planned unit development is considered to be
96 residential real estate. Subdivisions are not considered residential real
97 estate. Individual parcels of property located within a residential subdivision shall be
98 considered residential property;

99 [(21)] **(22)** "Specialized appraisal services", appraisal services which do not fall
100 within the definition of appraisal assignment. The term "specialized services" may
101 include valuation work and analysis work. Regardless of the intention of the client or
102 employer, if the appraiser is acting as a disinterested third party in rendering an
103 unbiased analysis, opinion or conclusion, the work is classified as an appraisal
104 assignment and not specialized services;

105 [(22)] **(23)** "State-certified general real estate appraiser", a person who holds a
106 current, valid certificate as a state-certified general real estate appraiser issued
107 pursuant to the provisions of sections 339.500 to 339.549;

108 [(23)] **(24)** "State-certified residential real estate appraiser", a person who holds
109 a current, valid certificate as a state-certified residential real estate appraiser issued
110 pursuant to the provisions of sections 339.500 to 339.549;

111 [(24)] **(25)** "State-licensed real estate appraiser", a person who holds a current,
112 valid license as a state-licensed real estate appraiser pursuant to the provisions of
113 sections 339.500 to 339.549;

114 [(25)] **(26)** "Subdivision", a tract of land that has been divided into blocks or
115 plots with streets, roadways, open areas and other facilities appropriate to its
116 development as residential, commercial or industrial sites;

117 [(26)] **(27)** "Temporary appraiser licensure or certification", the issuance of a
118 temporary license or certificate by the commission to a person licensed or certified in
119 another state who enters this state for the purpose of completing a particular appraisal
120 assignment.

 362.111. **1.** A bank or trust company may impose fees or service charges on
2 deposit accounts; however, such fees or service charges are subject to such conditions or
3 requirements that may be fixed by regulations pursuant to section 361.105, RSMo, by
4 the director of the division of finance and the state banking board. Notwithstanding any
5 law to the contrary, no such condition or requirement shall be more restrictive than the
6 fees or service charges on deposit accounts or similar accounts permitted any federally
7 chartered depository institution.

8 **2. An agreement to operate or share an automated teller machine shall**
9 **not prohibit an owner or operator of the automated teller machine from**
10 **imposing, on an individual who conducts a transaction using a foreign**
11 **account, an access fee or surcharge that is not otherwise prohibited under**
12 **federal or state law.**

13 **3. As used in this section, the following terms mean:**

14 **(1) "Automated teller machine", any electronic device, wherever**
15 **located, through which a consumer may initiate an electronic funds transfer**
16 **or may order, instruct, or authorize a financial institution to debit or credit**
17 **an account and includes any machine or device which may be used to carry**
18 **out electronic banking business. "Automated teller machine" does not include**
19 **point of sale terminals or telephones or personal computers operated by a**
20 **consumer;**

21 **(2) "Foreign account", an account with a financial institution located**
22 **outside the United States.**

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

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

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

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

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

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

33 (2) Such lender may use the preemption of Public Law 96-221, Section 501 with
34 respect to the residential real estate loan in question. When fees charged need not be

35 disclosed in the annual percentage rate required by Title 15, U.S.C. Sections 1601, et
36 seq., and regulations thereunder because such fees are de minimis amounts or for other
37 reasons, such fees need not be included in the annual percentage rate for state
38 examination purposes.

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

45 4. **The lender may offer, sell, and finance automobile club memberships,**
46 **service contracts issued by providers registered under sections 385.300 to**
47 **385.320, motor vehicle service contracts issued by providers registered under**
48 **sections 385.200 to 385.220, vehicle protection devices issued by providers**
49 **registered under sections 385.500 to 385.436, if such service contracts, motor**
50 **vehicle service contracts, and vehicle protection devices are required to be**
51 **registered by the department, and other plans and services that provide a**
52 **benefit to the borrower provided that:**

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

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

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

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

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

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

65 (7) **Nothing in this subsection shall exempt such other plans and**
66 **services from any other requirements or laws governing such product.**

67 5. If any points or fees are charged, required or received, which are in excess of
68 those permitted by this section, or which are not returned upon demand when required
69 by this section, then the person paying the same points or fees or his or her legal
70 representative may recover twice the amount paid together with costs of the suit and

71 reasonable attorney's fees, provided that the action is brought within five years of such
72 payment.

73 [5.] 6. Any lender who knowingly violates the provisions of this section is guilty
74 of a class B misdemeanor.

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

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

12 (2) The lawful fees actually and necessarily paid out by the lender to any public
13 officer for filing, recording, or releasing in any public office any instrument securing the
14 loan, which fees may be collected when the loan is made or at any time thereafter;
15 however, premiums for insurance in lieu of perfecting a security interest required by the
16 lender may be charged if the premium does not exceed the fees which would otherwise
17 be payable;

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

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

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

33 insurance providing life, health, accident, or involuntary unemployment coverage;

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

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

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

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

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

60 **(11) A deficiency waiver addendum, guaranteed asset protection, or a**
61 **similar product purchased as part of a loan transaction with collateral and**
62 **at the borrower's consent, provided the cost of the product is disclosed in the**
63 **loan contract, is reasonable, and the requirements of section 408.380 are met;**

64 **(12) The lender may offer, sell, and finance automobile club**
65 **memberships, service contracts issued by providers registered under sections**
66 **385.300 to 385.320, motor vehicle service contracts issued by providers**
67 **registered under sections 385.200 to 385.220, vehicle protection devices issued**
68 **by providers registered under sections 385.500 to 385.436, if such service**

69 **contracts, motor vehicle service contracts, and vehicle protection devices are**
70 **required to be registered by the department, and other plans and services**
71 **that provide a benefit to the borrower provided that:**

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

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

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

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

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

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

84 **(g) Nothing in this subdivision shall exempt such other plans and**
85 **services from and other requirements or laws governing such product.**

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

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

408.233. 1. No charge other than that permitted by section 408.232 shall be
2 directly or indirectly charged, contracted for or received in connection with any second
3 mortgage loan, except as provided in this section:

4 (1) Fees and charges prescribed by law actually and necessarily paid to public
5 officials for perfecting, releasing, or satisfying a security interest related to the second
6 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 purposes
10 including survey;

11 (b) Fees for preparation of a deed, settlement statement, or other documents;

12 (c) Fees for notarizing deeds and other documents;

13 (d) Appraisal fees; and

14 (e) Fees for credit reports;

15 (4) Charges for insurance as described in subsection 2 of this section;

16 (5) A nonrefundable origination fee not to exceed five percent of the principal
17 which may be used by the lender to reduce the rate on a second mortgage loan;

18 (6) Any amounts paid to the lender by any person, corporation or entity, other
19 than the borrower, to reduce the rate on a second mortgage loan or to assist the borrower
20 in qualifying for the loan;

21 (7) For revolving loans, an annual fee not to exceed fifty dollars may be assessed.

22 2. An additional charge may be made for insurance written in connection with
23 the loan, including insurance protecting the lender against the borrower's default or
24 other credit loss, and:

25 (1) For insurance against loss of or damage to property where no such coverage
26 already exists; and

27 (2) For insurance providing life, accident, health or involuntary unemployment
28 coverage.

29 3. The cost of any insurance shall not exceed the rates filed with the department
30 of insurance, financial institutions and professional registration, and the insurance shall
31 be obtained from an insurance company duly authorized to conduct business in this
32 state. Any person or entity making second mortgage loans, or any of its employees, may
33 be licensed to sell insurance permitted in this section.

34 4. On any second mortgage loan, a default charge may be contracted for and
35 received for any installment or minimum payment not paid in full within fifteen days of
36 its scheduled due date equal to five percent of the amount or fifteen dollars, whichever
37 is greater, not to exceed fifty dollars. A default charge may be collected only once on an
38 installment or a payment due however long it remains in default. A default charge may
39 be collected at the time it accrues or at any time thereafter and for purposes of
40 subsection 3 of section 408.234 a default charge shall be treated as a payment. No
41 default charge may be collected on an installment or a payment due which is paid in full
42 within fifteen days of its scheduled due date even though an earlier installment or
43 payment or a default charge on earlier installment or payments may not have been paid
44 in full.

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

55 **6. No provision of this section shall be construed to prohibit the sale**
56 **of a deficiency waiver addendum, guaranteed asset protection, or a similar**
57 **product purchased as part of a loan transaction with collateral and at the**
58 **borrower's consent, provided the cost of the product is disclosed in the loan**
59 **contract, is reasonable, and the requirements of section 408.380 are met.**

60 **7. The lender may offer, sell, and finance automobile club memberships,**
61 **service contracts issued by providers registered under sections 385.300 to**
62 **385.320, motor vehicle service contracts issued by providers registered under**
63 **sections 385.200 to 385.220, vehicle protection devices issued by providers**
64 **registered under sections 385.500 to 385.436, if such service contracts, motor**
65 **vehicle service contracts, and vehicle protection devices are required to be**
66 **registered by the department, and other plans and services that provide a**
67 **benefit to the borrower provided that:**

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

69 **(2) Lenders shall not require the purchase of the plan as a condition**
70 **for approval of the loan;**

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

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

76 **(5) No plan shall include reimbursement for a deductible on a property**
77 **insurance claim;**

78 **(6) All optional products other than the loan contract shall be clearly**
79 **identified as optional and not a required purchase; and**

80 **(7) Nothing in this subsection shall exempt such other plans and**
81 **services from any other requirements or laws governing such product.**

408.300. 1. Notwithstanding the provisions of any other law, the seller or other holder under a retail time contract may charge, receive and collect a time charge, which shall be in lieu of any interest charges, except such as may arise under the terms of sections 408.250 to 408.370 after maturity of the time contract and which charge shall not exceed the amount agreed to by the parties to the retail time contract. The time charge under this subsection shall be computed on the principal balance of each transaction, as determined under subsection 5 of section 408.260, on contracts payable in successive monthly payments substantially equal in amount from the date of the contract to the maturity of the final payment, notwithstanding that the total time balance thereof is required to be paid in one or more deferred payments, or if goods are delivered or services performed more than ten days after that date, with the date of commencement of delivery of goods or performance of services to the maturity of the final payment. When a retail time contract provides for payment other than in substantially equal successive monthly payments, the time charge shall not exceed the amount which will provide the same return as is permitted on substantially equal monthly payment contracts. Each day may be counted as one-thirtieth of a month. In lieu of any other charge, a minimum time charge of twelve dollars may be charged, received, and collected on each such contract.

2. Notwithstanding the provisions of any other law, the seller and assignee under a retail charge agreement may charge, receive and collect a time charge which shall not exceed the amount agreed to by the parties to the retail charge agreement. The time charge under this subsection shall be computed on an amount not exceeding the greater of either:

(1) The average daily balance of the account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle; amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day; or

(2) The unpaid balance of the account on the last day of the billing cycle after first deducting all payments, credits and refunds during the billing cycle; or for all unpaid balances within a range of not in excess of ten dollars on the basis of the median amount within such range, if as so computed such time charge is applied to all unpaid balances within such range. A minimum time charge not in excess of seventy cents per month may be charged, received and collected.

3. The time charge shall include all charges incident to investigating and making any retail time transaction. No fee, expense, delinquency charge, collection charge, or

37 other charge whatsoever, shall be charged, received, or collected except as provided in
38 sections 408.250 to 408.370.

39 **4. No provision of this section shall be construed to prohibit the sale**
40 **of a deficiency waiver addendum, guaranteed asset protection, or a similar**
41 **product purchased as part of a loan transaction with collateral and at the**
42 **borrower's consent, provided the cost of the product is disclosed in the loan**
43 **contract, is reasonable, and the requirements of section 408.380 are met.**

408.380. 1. Notwithstanding any provision of sections 408.140, 408.233,
2 **408.300, or any other law to the contrary, no provision of such sections shall**
3 **be construed to prohibit the sale of a deficiency waiver addendum,**
4 **guaranteed asset protection, or a similar product purchased as part of a loan**
5 **transaction with collateral and at the borrower's consent, provided the cost**
6 **of the product is reasonable and is disclosed in the loan contract. The**
7 **borrower's consent to the purchase of the deficiency waiver addendum,**
8 **guaranteed asset protection, or a similar product shall be in writing and**
9 **acknowledge receipt of the required disclosures by the borrower. The**
10 **creditor shall retain a copy for the file.**

11 **2. Each deficiency waiver addendum, guaranteed asset protection, or**
12 **other similar product shall provide that in the event of termination of the**
13 **product prior to the scheduled maturity date of the indebtedness, any refund**
14 **of an amount paid by the debtor for such product shall be paid or credited**
15 **promptly to the person entitled thereto; provided, however, that no refund of**
16 **less than one dollar need be made. The formula to be used in computing the**
17 **refund shall be the pro rata method.**

18 **3. Any debtor may cancel a deficiency waiver addendum, guaranteed**
19 **asset protection, or other similar product within fifteen days of its purchase**
20 **and shall receive a complete refund or credit of premium. This right shall be**
21 **set forth in the loan contract, or by separate written disclosure. This right**
22 **shall be disclosed at the time the debt is incurred in ten-point type and in a**
23 **manner reasonably calculated to inform the debtor of this right.**

475.190. 1. On or after August 28, 2009, the conservator shall invest liquid
2 **assets of the estate of the protectee, other than funds needed to meet debts and expenses**
3 **currently payable, in accordance with the provisions of the Missouri prudent investor act,**
4 **sections 469.900 to 469.913, RSMo, subject to the following exceptions:**

5 (1) Investment of any part or all of the liquid assets:

6 (a) In direct obligation of or obligations unconditionally guaranteed as to
7 principal and interest by the United States; or

8 (b) In interest-bearing accounts and time deposits, including time certificates of
9 deposit, in financial institutions to the extent the account or deposits are insured by the
10 Federal Deposit Insurance Corporation **or the National Credit Union Share**
11 **Insurance Fund**, shall constitute prudent investments;

12 (2) If the conservator determines it appropriate to delegate investment and
13 management functions to an agent as provided in section 469.909, RSMo, the agent to
14 whom the delegation is made shall acknowledge in a writing delivered to the conservator
15 that the agent is acting as an investment fiduciary on the account.

16 2. Every conservator shall make a report at every annual settlement of the
17 disposition made by the conservator of the money belonging to the protectee entrusted
18 to the conservator. If it appears that the money is invested in securities, then the
19 conservator shall report a detailed description of the securities and shall describe any
20 real estate security and state where it is situated, and its value, which report shall be
21 filed in the court. The court shall carefully examine into the report as soon as made,
22 and, if in the opinion of the court the security is insufficient, the court shall make such
23 orders as are necessary to protect the interest of the protectee. The conservator and the
24 conservator's sureties are liable on their bond for any omission to comply with the orders
25 of the court. If the money has not been invested as authorized by law the conservator
26 shall state that fact and the reasons, and shall state that the conservator has been
27 unable to make an investment after diligent effort to do so.

28 3. If any conservator refuses or neglects to make the report at the time aforesaid,
29 or makes a false report thereof, the conservator and the conservator's sureties are liable
30 on their bond for all loss or damage to the protectee occasioned by reason of the
31 conservator's neglect or refusal so to report, or by making a false report, and the
32 conservator may, on account thereof, be removed from the conservator's trust in the
33 discretion of the court.

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