

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 571
101ST GENERAL ASSEMBLY

1505H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 365.100, 365.140, 408.035, 408.100, 408.140, 408.178, 408.233, 408.234, 408.250, 408.553, and 408.554, RSMo, and to enact in lieu thereof eleven new sections relating to consumer loans.

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

Section A. Sections 365.100, 365.140, 408.035, 408.100, 408.140, 408.178, 408.233, 2 408.234, 408.250, 408.553, and 408.554, RSMo, are repealed and eleven new sections enacted 3 in lieu thereof, to be known as sections 365.100, 365.140, 408.035, 408.100, 408.140, 408.178, 4 408.233, 408.234, 408.250, 408.553, and 408.554, to read as follows:

365.100. 1. 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;

14 (3) A ~~[dishonored or insufficient funds check fee]~~ **reasonable service fee not to exceed** 15 **the amount permitted under subdivision (2) of subsection 6 of section 570.120 for any**

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 **check, draft, order, or like instrument that is returned unpaid by a financial institution,**
17 **plus an amount** equal to ~~[such fee as provided in section 408.653, in addition to]~~ **the actual fees**
18 charged by ~~[a bank]~~ **the financial institution** for each check, draft, order, or like instrument
19 ~~[which is]~~ returned unpaid; and

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

22 2. A holder of a contract may impose a convenience fee for payments using an
23 alternative payment channel that accepts a debit or credit card not present transaction,
24 nonface-to-face payment, provided that:

25 (1) The person making the payment is notified of the convenience fee; and

26 (2) The fee is fixed or flat, except that the fee may vary based upon method of payment
27 used.

365.140. Notwithstanding the provisions of any retail installment contract to the contrary
2 any buyer may prepay in full, whether by payment in cash, extension or renewal, at any time
3 before maturity the debt of any retail installment contract and on so paying the debt shall receive
4 a refund credit thereon for the anticipation of payment. The amount of the refund shall be
5 calculated by the actuarial method. The lender shall retain no more interest than is actually
6 earned whenever a retail installment contract is prepaid. Any insurance rendered unnecessary
7 by reason of prepayment shall be cancelled by the holder and any refund of premiums received
8 by the holder shall be treated in accordance with the provisions of subsection 2 of section
9 365.080. **If a retail installment contract is paid in full, the holder shall provide the buyer**
10 **proof of payment in full, which may be by a letter referencing the contract or by returning**
11 **the original contract, or a copy thereof, that is marked as paid in full by the holder. Any**
12 **letter referencing the contract shall include information that identifies the contract such**
13 **as the original loan date, account number, or other identifying number or code.**

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

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

6 (2) ~~[Business loan of five thousand dollars or more]~~ **Extension of credit primarily for**
7 **agricultural, business, or commercial purposes;**

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

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

408.100. This section shall apply to all loans which are not made as permitted by other
2 laws of this state except that it shall not apply to loans which are secured by a lien on real estate[-
3 ~~nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations~~]. On
4 any loan subject to this section, any person, firm, or corporation may charge, contract for and
5 receive interest 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
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 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 ten percent of the principal amount loaned not to exceed one hundred 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 **and the**
13 **reasonable and bona fide third-party fees incurred for remote or electronic filing**, which
14 fees may be collected when the loan is made or at any time thereafter; however, premiums for
15 insurance in lieu of perfecting a security interest required by the lender may be charged if the
16 premium does not exceed the fees which would otherwise be payable;

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

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

27 (5) Charges or premiums for insurance written in connection with any loan against loss
28 of or damage to property or against liability arising out of ownership or use of property as

29 provided in section 367.170; however, notwithstanding any other provision of law, with the
30 consent of the borrower, such insurance may cover property all or part of which is pledged as
31 security for the loan, and charges or premiums for insurance providing life, health, accident, or
32 involuntary unemployment coverage;

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

36 (7) ~~[Charges assessed by any institution for processing a refused instrument plus a~~
37 ~~handling fee of not more than twenty-five dollars]~~ **A reasonable service fee not to exceed the**
38 **amount permitted under subdivision (2) of subsection 6 of section 570.120 for any check,**
39 **draft, order, or like instrument that is returned unpaid by a financial institution, plus an**
40 **amount equal to the actual fees charged by the financial institution for each check, draft,**
41 **order, or like instrument returned unpaid;**

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

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

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

62 ~~[(11)]~~ **(10)** A deficiency waiver addendum, guaranteed asset protection, or a similar
63 product purchased as part of a loan transaction with collateral and at the borrower's consent,

64 provided the cost of the product is disclosed in the loan contract, is reasonable, and the
65 requirements of section 408.380 are met;

66 ~~[(12)]~~ (11) A convenience fee for payments using an alternative payment channel that
67 accepts a debit or credit card not present transaction, nonface-to-face payment, provided that:

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

69 (b) The fee is fixed or flat, except that the fee may vary based upon method of payment
70 used.

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

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

408.178. Notwithstanding any other law to the contrary~~[, on loans with an original~~
2 ~~amount of six hundred dollars or more,]~~ and provided the debtor agrees in writing, the lender
3 may collect a fee in advance for allowing the debtor to defer ~~[monthly]~~ loan payments, so long
4 as the fee on each deferred period is no more than the lesser of fifty dollars or ten percent of the
5 loan payments deferred, however, a minimum fee of twenty-five dollars is permitted, and no
6 extensions are made until the first loan payment is collected on any one loan. This section
7 applies to nonprecomputed loans only.

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:

4 (1) Fees and charges prescribed by law actually and necessarily paid to public officials
5 for perfecting, releasing, or satisfying a security interest related to the second mortgage loan **and**
6 **reasonable and bona fide third-party fees incurred for remote or electronic filing;**

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 including
10 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 which
17 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 than the
19 borrower, to reduce the rate on a second mortgage loan or to assist the borrower in qualifying for
20 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 the loan,
23 including insurance protecting the lender against the borrower's default or other credit loss, and:
- 24 (1) For insurance against loss of or damage to property where no such coverage already
25 exists; and
- 26 (2) For insurance providing life, accident, health or involuntary unemployment coverage.
- 27 3. The cost of any insurance shall not exceed the rates filed with the department of
28 commerce and insurance, and the insurance shall be obtained from an insurance company duly
29 authorized to conduct business in this state. Any person or entity making second mortgage loans,
30 or any of its employees, may be licensed to sell insurance permitted in this section.
- 31 4. On any second mortgage loan, a default charge may be contracted for and received for
32 any installment or minimum payment not paid in full within fifteen days of its scheduled due
33 date equal to five percent of the amount or fifteen dollars, whichever is greater, not to exceed
34 fifty dollars. A default charge may be collected only once on an installment or a payment due
35 however long it remains in default. A default charge may be collected at the time it accrues or
36 at any time thereafter and for purposes of subsection [3] 2 of section 408.234 a default charge
37 shall be treated as a payment. No default charge may be collected on an installment or a payment
38 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. No provision of this section shall be construed to prohibit the sale of a deficiency
51 waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan
52 transaction with collateral and at the borrower's consent, provided the cost of the product is
53 disclosed in the loan contract, is reasonable, and the requirements of section 408.380 are met.

408.234. 1. ~~[No lender shall make a second mortgage loan pursuant to sections 408.231
2 to 408.241 in an initial principal amount of less than two thousand five hundred dollars.~~

3 ~~———2.]~~ A lender may take a security interest in any collateral in conjunction with residential
4 real estate in connection with a second mortgage loan.

5 ~~[3-]~~ 2. The borrower shall have an unconditional right to prepay any second mortgage
6 loan. If any such loan providing for interest being added to the principal is prepaid in full one
7 month or more before the final installment date, the lender shall recompute the amount of interest
8 earned to the date of prepayment in full on the basis of the rate of interest originally contracted
9 for computed on the actual unpaid principal balances for the time actually outstanding.

10 ~~[4-]~~ 3. When fees charged need not be disclosed in the annual percentage rate required
11 by Title 15, U.S.C. Sections 1601, et seq., and regulations thereunder because such fees are
12 de minimus amounts or for other reasons, such fees need not be included in the annual percentage
13 rate for state examination purposes.

408.250. Unless otherwise clearly indicated by the context, the following words when
2 used in sections 408.250 to 408.370, for the purposes of sections 408.250 to 408.370, shall have
3 the meanings respectively ascribed to them in this section:

4 (1) "Cash sale price" means the price stated in a retail time transaction for which the
5 seller would have sold or furnished to the buyer, and the buyer would have bought or obtained
6 from the seller, the goods or services which are the subject matter of the retail time transaction,
7 if such sale were for cash. The cash sale price may include the cost of taxes, official fees, if any,
8 and charges for accessories and their installation and delivery, and for the servicing, repairing
9 or improving of goods. If a retail time transaction involves the repair, modernization, alteration
10 or rehabilitation of real property, the cash sale price may include reasonable fees and costs
11 actually to be paid for construction permits and similar fees, the services of an attorney and any
12 title search and title insurance relating to any mortgage, lien or other security interest taken,
13 granted or reserved pursuant to contract;

14 (2) "Credit" means the right granted by a creditor to a debtor to defer payment of a debt
15 or to incur debt and defer its payment. It includes the right to incur debt and defer its payment
16 pursuant to the use of a card, plate, coupon book, or other credit confirmation or identification
17 device or number or other identifying description;

18 (3) The term "creditor" refers only to creditors who regularly extend, or arrange for the
19 extension of, credit whether in connection with loans, sales of property or services, or otherwise;

20 (4) "Goods" means all tangible chattels personal and merchandise certificates or coupons
21 issued by a retail seller exchangeable for tangible chattels personal of such seller, but the term
22 does not include motor vehicles, nonprocessed farm products, livestock, money, things in action,
23 or intangible personal property. The term includes tangible chattels personal which, at the time
24 of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or
25 not severable therefrom;

26 (5) "Holder" of a retail time contract means the retail seller of the goods or services
27 under the contract or, if the contract is purchased or otherwise acquired, the person purchasing
28 or otherwise acquiring the contract;

29 (6) "Insurance company" means any form of lawfully authorized insurer in this state;

30 (7) "Motor vehicle" means any new or used automobile, motor home, manufactured
31 home as defined in section 700.010, excluding a manufactured home with respect to which the
32 requirements of subsections 1 to 3 of section 700.111, as applicable, have been satisfied,
33 motorcycle, truck, trailer, semitrailer, truck tractor, or bus, primarily designed or used to
34 transport persons or property on a public highway, road or street, or a mobile or modular home
35 or farm machinery or implements;

36 (8) "Official fees" means the fees prescribed by law for filing, recording, or otherwise
37 perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection
38 with a retail time transaction **and reasonable and bona fide third-party fees incurred for**
39 **remote electronic filing;**

40 (9) "Person" means an individual, partnership, corporation, association, and any other
41 group however organized;

42 (10) "Principal balance" means the cash sale price of the goods or services which are the
43 subject matter of a retail time transaction plus the amount, if any, included in a retail time
44 contract, if a separate identified charge is made therefor and stated in the contract, for insurance
45 and other benefits and official fees, minus the amount of the buyer's down payment in money or
46 goods;

47 (11) "Retail buyer" or "buyer" means a person who buys goods or obtains services to be
48 used primarily for personal, family, or household purposes and not primarily for business,
49 commercial, or agricultural purposes from a retail seller in a retail time transaction;

50 (12) "Retail charge agreement" means an agreement entered into in this state between
51 a retail seller and a retail buyer prescribing the terms of retail time transactions to be made from
52 time to time pursuant to such agreement, and which provides for a time charge to be computed
53 on the buyer's total unpaid balance from time to time;

54 (13) "Retail seller" or "seller" means a person who regularly sells or offers to sell goods
55 or services to a buyer primarily for the latter's personal, family, or household use and not
56 primarily for business, commercial, or agricultural use. The term also includes a person who
57 regularly grants credit to retail buyers for the purpose of purchasing goods or services from any
58 person, pursuant to a retail charge agreement, but shall not apply to any person licensed or
59 chartered and regulated to engage regularly in the business of making loans from or in this state;

60 (14) "Retail time contract" means an agreement evidencing one or more retail time
61 transactions entered into in this state pursuant to which a buyer engages to pay in one or more
62 deferred payments the time sale price of goods or services. The term includes a chattel
63 mortgage; conditional sales contract; and a contract for the bailment or leasing of goods by which
64 the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent
65 to or in excess of their cash sale price and by which it is agreed that the bailee or lessee is bound
66 to become, or, for no further or a merely nominal consideration has the option of becoming, the
67 owner of the goods upon full compliance with the provisions of the contract;

68 (15) "Retail time transaction" means a contract to sell or furnish or the sale of or
69 furnishing of goods or services by a retail seller to a retail buyer for which payment is to be made
70 in one or more deferred payments under and pursuant to a retail time contract or a retail charge
71 agreement;

72 (16) "Services" means work, labor and services of any kind furnished or agreed to be
73 furnished by a retail seller but does not include professional services including, but not limited
74 to, services performed by an accountant, physician, lawyer or the like, unless the furnishing of
75 such professional services is the subject of a signed retail time transaction;

76 (17) "Time charge" means the amount, however denominated or expressed, in excess of
77 the cash sale price under a retail charge agreement or the principal balance under a retail time
78 contract which a retail buyer contracts to pay or pays for goods or services. It includes the
79 extension to the buyer of the privilege of paying therefor in one or more deferred payments;

80 (18) "Time sale price" means the total of the cash sale price of the goods or services and
81 the amount, if any, included for insurance and other benefits if a separate identified charge is
82 made therefor, and the amounts of the official fees, and the time charge.

408.553. Upon default the lender shall be entitled to recover ~~[no more than the amount~~
2 ~~which the borrower would have been required to pay upon prepayment of the obligation on]~~ **the**
3 **amount due and accrued under the agreement, including interest and penalties through**
4 **the date of payment in full or the date of a final judgment** ~~[together with interest thereafter at]~~
5 **. Following a judgment, the lender may additionally recover** the simple interest equivalent
6 of the rate provided in the contract **as applied to the amount of the judgment until the date**
7 **the judgment is paid and satisfied.**

408.554. 1. After a borrower has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of the collateral, a lender may give the borrower and all cosigners on the credit transaction the notice described in this section. A lender gives notice to the borrower and cosigners under this section when he delivers the notice to the borrower or cosigner or mails the notice to him at his last known address.

2. Except as provided in subsection 4 of this section, the notice shall be in writing and conspicuously state: The name, address and telephone number of the lender to whom payment is to be made, a brief identification of the credit transaction, the borrower's right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

(name, address, and telephone number of lender)

(account number, if any)

(brief identification of credit transaction)

(amount) is the AMOUNT NOW DUE. (date) is the LAST DAY FOR PAYMENT. You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

3. If the loan transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2 of this section and a notice in substantially the form specified in that subsection complies with this subsection, except for the following:

(1) In lieu of a brief identification of the loan transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be cancelled;

(2) In lieu of the statement in the form of notice specified in subsection 2 of this section that the lender may exercise his rights under the law, the statement that each policy or contract identified in the notice may be cancelled; and

(3) The last paragraph of the form of notice specified in subsection 2 of this section shall be omitted.

4. If a credit transaction is secured, the notice described in this section shall further state the following: "If you voluntarily surrender possession of the following specified collateral, you could still owe additional money after the money received from the sale of the collateral is deducted from the total amount you owe."

~~[5. In the case of a second default on the same loan made pursuant to section 408.100 or on the same retail time transaction as defined in section 408.250 or in the case of a third default on the same second mortgage loan as defined in section 408.231, the notice described in~~

37 ~~subsection 2 of this section shall indicate that in the case of further default, the borrower will~~
38 ~~have no right to cure.]~~

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