

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 2086

102ND GENERAL ASSEMBLY

4540H.02P

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 408.035, 408.140, and 442.210, RSMo, and to enact in lieu thereof three new sections relating to real estate transactions.

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

Section A. Sections 408.035, 408.140, and 442.210, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 408.035, 408.140, and 442.210,  
3 to read as follows:

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

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

6 (2) Extension of credit primarily for agricultural, business, or commercial purposes;

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

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

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  
4 to 367.200 and except:

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.

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

11 (2) The lawful fees actually and necessarily paid out by the lender to any public  
12 officer for filing, recording, or releasing in any public office any instrument securing the loan,  
13 and 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  
18 minimum payment in default for a period of not less than fifteen days in an amount not to  
19 exceed five percent of each installment due or the minimum payment due or fifteen dollars,  
20 whichever is greater, not to exceed fifty dollars. If the contract so provides, a charge for late  
21 payment on each twenty-five dollars or less installment in default for a period of not less than  
22 fifteen days shall 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  
28 loss 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,  
32 or involuntary unemployment coverage;

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

36 (7) A reasonable service fee not to exceed the amount permitted under subdivision (2)  
37 of subsection 6 of section 570.120 for any check, draft, order, or like instrument that is  
38 returned unpaid by a financial institution, plus an amount equal to the actual fees charged by  
39 the financial institution for each check, draft, order, or like instrument returned unpaid;

40 (8) If the contract or promissory note, signed by the borrower, provides for attorney  
41 fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of

42 the amount due and payable under such contract or promissory note, together with any court  
43 costs assessed. The attorney fees shall only be applicable where the contract or promissory  
44 note is referred for collection to an attorney, and is not handled by a salaried employee of the  
45 holder of the contract;

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

54 (10) A deficiency waiver addendum, guaranteed asset protection, or a similar product  
55 purchased as part of a loan transaction with collateral and at the borrower's consent, provided  
56 the cost of the product is disclosed in the loan contract, is reasonable, and the requirements of  
57 section 408.380 are met;

58 (11) A convenience fee for payments using an alternative payment channel that  
59 accepts a debit or credit card not present transaction, nonface-to-face payment, provided that:

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

61 (b) The fee is fixed or flat, except that the fee may vary based upon method of  
62 payment used; **and**

63 **(12) A charge equal to the cost of the credit report.**

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

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

442.210. 1. The certificate of acknowledgment shall state the act of  
2 acknowledgment, and that the person making the same was personally known to at least  
3 one judge of the court, or to the officer granting the certificate, to be the person whose name is  
4 subscribed to the instrument as a party thereto, or was proved to be such by at least two  
5 witnesses, whose names and places of residence shall be inserted in the certificate; and the

6 following forms of acknowledgment may be used in the case of conveyances or other written  
7 instruments affecting real estate; and any acknowledgment so taken and certificate shall be  
8 sufficient to satisfy all requirements of law relating to the execution or recording of such  
9 instruments (begin in all cases by a caption, specifying the state and place where the  
10 acknowledgment is taken):

11 (1) In case of natural persons acting in their own right

12 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared A B (or A B  
13 and C D), to me known to be the person (or persons) described in and who executed the  
14 foregoing instrument, and acknowledged that he (or they) executed the same as his (or their)  
15 free act and deed.

16 (2) In the case of natural persons acting by attorney

17 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared A B, to me  
18 known to be the person who executed the foregoing instrument in behalf of C D, and  
19 acknowledged that he executed the same as the free act and deed of C D.

20 (3) In the case of corporations or joint stock associations

21 On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me appeared A B, to me personally  
22 known, who, being by me duly sworn (or affirmed) did say that he is the president (or other  
23 officer or agent of the corporation or association), of (describing the corporation or  
24 association), and that the seal affixed to foregoing instrument is the corporate seal of said  
25 corporation (or association), and that said instrument was signed and sealed in behalf of said  
26 corporation (or association) by authority of its board of directors (or trustees), and said A B  
27 acknowledged said instrument to be the free act and deed of said corporation (or association).

28 2. In case the corporation or association has no corporate seal, omit the words "the  
29 seal affixed to said instrument is the corporate seal of said corporation (or association), and  
30 that", and add at the end of the affidavit clause the words "and that said corporation (or  
31 association) has no corporate seal".

32 3. (In all cases add signature and title of the officer taking the acknowledgment.)

33 ~~[4. When a married woman unites with her husband in the execution of any such  
34 instrument, and acknowledges the same in one of the forms above sanctioned, she shall be  
35 described in the acknowledgment as his wife, but in all other respects her acknowledgment  
36 shall be taken and certified as if she were sole; and no separate examination of a married  
37 woman in respect to the execution of any release or dower, or other instrument affecting real  
38 estate, shall be required.]~~

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