

FIRST REGULAR SESSION

# SENATE BILL NO. 466

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 7, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1532S.02I

## AN ACT

To repeal sections 408.052, 408.140, and 408.233, RSMo, and to enact in lieu thereof three new sections relating to home and automobile security plans, with penalty provisions.

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Section A. Sections 408.052, 408.140, and 408.233, RSMo, are repealed  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

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

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

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

18 adopted; and

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

26 (3) Provided that the 1994 reenactment of this section shall not be  
27 construed to be action taken in accordance with Public Law 96-221, Section  
28 501(b)(4). Any points or fees received in excess of those permitted under this  
29 section shall be returned to the person from whom received upon demand.

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

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

37 (2) Such lender may use the preemption of Public Law 96-221, Section 501  
38 with respect to the residential real estate loan in question.

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

43 **3. The lender may offer and charge for motor vehicle extended**  
44 **service contracts and home and automobile security plans, which**  
45 **provide various services to members, including but not limited to,**  
46 **protection against home or automobile emergencies, reimbursement of**  
47 **certain costs incurred due to home or automobile emergencies,**  
48 **payments for deductibles, legal defense services, warranties, discounts,**  
49 **and other service items such as locksmith, towing, lost key services,**  
50 **emergency transportation, and such other related services or features.**

51 4. The lender may charge and collect bona fide fees for services actually  
52 and necessarily performed in good faith in connection with a residential real  
53 estate loan as provided in subsection 2 of this section; however, the lender's board

54 of directors shall determine whether such bona fide fees shall be paid to the  
55 lender or businesses related to the lender in subsection 2 of this section, but may  
56 allow current contractual relationships to continue for up to two years.

57 [4.] 5. If any points or fees are charged, required or received, which are  
58 in excess of those permitted by this section, or which are not returned upon  
59 demand when required by this section, then the person paying the same points  
60 or fees or his or her legal representative may recover twice the amount paid  
61 together with costs of the suit and reasonable attorney's fees, provided that the  
62 action is brought within five years of such payment.

63 [5.] 6. Any lender who knowingly violates the provisions of this section  
64 is guilty of a class B misdemeanor.

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

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

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

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

25 (4) If the contract so provides, a charge for late payment for a single

26 payment note in default for a period of not less than fifteen days in an amount  
27 not to exceed five percent of the payment due; provided that, the late charge for  
28 a single payment note shall not exceed fifty dollars;

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

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

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

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

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

55 (10) **The lender may offer and charge for motor vehicle extended**  
56 **service contracts and home and automobile security plans, which**  
57 **provide various services to members, including but not limited to,**  
58 **protection against home or automobile emergencies, reimbursement of**  
59 **certain costs incurred due to home or automobile emergencies,**  
60 **payments for deductibles, legal defense services, warranties, discounts,**  
61 **and other service items such as locksmith, towing, lost key services,**

**62 emergency transportation, and such other related services or features;**

63 (11) If the open-end credit contract is tied to a transaction account in a  
64 depository institution, such account is in the institution's assets and such  
65 contract provides for loans of thirty-one days or longer which are "open-end  
66 credit", as such term is defined in the federal Consumer Credit Protection Act and  
67 regulations thereunder, the creditor may charge a credit advance fee of the lesser  
68 of twenty-five dollars or five percent of the credit advanced from time to time  
69 from the line of credit; such credit advance fee may be added to the open-end  
70 credit outstanding along with any interest, and shall not be considered the  
71 unlawful compounding of interest as that term is defined in section 408.120.

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

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

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

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

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

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

14 (d) Appraisal fees; and

- 15 (e) Fees for credit reports;
- 16 (4) Charges for insurance as described in subsection 2 of this section;
- 17 (5) A nonrefundable origination fee not to exceed five percent of the  
18 principal which may be used by the lender to reduce the rate on a second  
19 mortgage loan;
- 20 (6) Any amounts paid to the lender by any person, corporation or entity,  
21 other than the borrower, to reduce the rate on a second mortgage loan or to assist  
22 the borrower in qualifying for the loan;
- 23 (7) **The lender may offer and charge for motor vehicle extended  
24 service contracts and home and automobile security plans, which  
25 provide various services to members, including but not limited to,  
26 protection against home or automobile emergencies, reimbursement of  
27 certain costs incurred due to home or automobile emergencies,  
28 payments for deductibles, legal defense services, warranties, discounts,  
29 and other service items such as locksmith, towing, lost key services,  
30 emergency transportation, and such other related services or features;**
- 31 (8) For revolving loans, an annual fee not to exceed fifty dollars may be  
32 assessed.
- 33 2. An additional charge may be made for insurance written in connection  
34 with the loan, including insurance protecting the lender against the borrower's  
35 default or other credit loss, and:
- 36 (1) For insurance against loss of or damage to property where no such  
37 coverage already exists; and
- 38 (2) For insurance providing life, accident, health or involuntary  
39 unemployment coverage.
- 40 3. The cost of any insurance shall not exceed the rates filed with the  
41 division of insurance, and the insurance shall be obtained from an insurance  
42 company duly authorized to conduct business in this state. Any person or entity  
43 making second mortgage loans, or any of its employees, may be licensed to sell  
44 insurance permitted in this section.
- 45 4. On any second mortgage loan, a default charge may be contracted for  
46 and received for any installment or minimum payment not paid in full within  
47 fifteen days of its scheduled due date equal to five percent of the amount or  
48 fifteen dollars, whichever is greater, not to exceed fifty dollars. A default charge  
49 may be collected only once on an installment or a payment due however long it  
50 remains in default. A default charge may be collected at the time it accrues or

51 at any time thereafter and for purposes of subsection 3 of section 408.234 a  
52 default charge shall be treated as a payment. No default charge may be collected  
53 on an installment or a payment due which is paid in full within fifteen days of its  
54 scheduled due date even though an earlier installment or payment or a default  
55 charge on earlier installment or payments may not have been paid in full.

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

Bill ✓

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