

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 540

95TH GENERAL ASSEMBLY

1604L.03P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 408.052, 408.140, 408.233, and 408.300, RSMo, and to enact in lieu thereof five new sections relating to the sale of certain products and plans associated with certain loan transactions, with penalty provisions.

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

Section A. Sections 408.052, 408.140, 408.233, and 408.300, RSMo, are repealed and  
2 five new sections enacted in lieu thereof, to be known as sections 408.052, 408.094, 408.140,  
3 408.233, and 408.300, to read as follows:

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

42 4. **The lender may offer, sell, and finance automobile club memberships, home and**  
43 **auto security plans, and other plans and services that provide a benefit to the borrower.**

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

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

**408.094. Nothing in this chapter shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's option, provided the cost of the product is disclosed in the loan contract.**

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

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

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

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

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

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

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

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

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

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

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

56 **(11) A deficiency waiver addendum, guaranteed asset protection, or a similar**  
57 **product purchased as part of a loan transaction with collateral and at the borrower's**  
58 **option, provided the cost of the product is disclosed in the loan contract;**

59 **(12) A lender may offer, sell, and finance automobile club memberships, home and**  
60 **auto security plans, and other plans and services that provide a benefit to the borrower.**

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

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

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

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;

6           (2) Taxes;

7           (3) Bona fide closing costs paid to third parties, which shall include:

8           (a) Fees or premiums for title examination, title insurance, or similar purposes including  
9 survey;

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

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

12          (d) Appraisal fees; and

13          (e) Fees for credit reports;

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

15          (5) Nonrefundable [fee] **fees** not to exceed **in total** five percent of the principal which  
16 may be used by the lender to reduce the rate on a second mortgage loan;

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

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

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

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

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

26           3. The cost of any insurance shall not exceed the rates filed with the department of  
27 insurance, financial institutions and professional registration, and the insurance shall be obtained  
28 from an insurance company duly authorized to conduct business in this state. Any person or  
29 entity making second mortgage loans, or any of its employees, may be licensed to sell insurance  
30 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 of section 408.234 a default charge shall  
37 be treated as a payment. No default charge may be collected on an installment or a payment due  
38 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**  
52 **a loan transaction with collateral and at the borrower's option, provided the cost of the**  
53 **product is disclosed in the loan contract.**

54 **7. The lender may offer, sell, and finance automobile club memberships, home and**  
55 **auto security plans, and other plans and services that provide a benefit to the borrower.**

408.300. 1. Notwithstanding the provisions of any other law, the seller or other holder  
2 under a retail time contract may charge, receive and collect a time charge, which shall be in lieu  
3 of any interest charges, except such as may arise under the terms of sections 408.250 to 408.370  
4 after maturity of the time contract and which charge shall not exceed the amount agreed to by  
5 the parties to the retail time contract. The time charge under this subsection shall be computed  
6 on the principal balance of each transaction, as determined under subsection 5 of section  
7 408.260, on contracts payable in successive monthly payments substantially equal in amount  
8 from the date of the contract to the maturity of the final payment, notwithstanding that the total  
9 time balance thereof is required to be paid in one or more deferred payments, or if goods are  
10 delivered or services performed more than ten days after that date, with the date of  
11 commencement of delivery of goods or performance of services to the maturity of the final  
12 payment. When a retail time contract provides for payment other than in substantially equal  
13 successive monthly payments, the time charge shall not exceed the amount which will provide

14 the same return as is permitted on substantially equal monthly payment contracts. Each day may  
15 be counted as one-thirtieth of a month. In lieu of any other charge, a minimum time charge of  
16 twelve dollars may be charged, received, and collected on each such contract.

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

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

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

32 3. The time charge shall include all charges incident to investigating and making any  
33 retail time transaction. No fee, expense, delinquency charge, collection charge, or other charge  
34 whatsoever, shall be charged, received, or collected except as provided in sections 408.250 to  
35 408.370.

36 **4. No provision of this section shall be construed to prohibit the sale of a deficiency**  
37 **waiver addendum, guaranteed asset protection, or a similar product purchased as part of**  
38 **a loan transaction with collateral and at the borrower's option, provided the cost of the**  
39 **product is disclosed in the loan contract.**

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