

SECOND REGULAR SESSION

HOUSE BILL NO. 2790

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

5807H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 408.031, 408.096, and 408.140, RSMo, and to enact in lieu thereof three new sections relating to financial transactions, with a penalty provision.

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

Section A. Sections 408.031, 408.096, and 408.140, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 408.031, 408.096, and 408.140, to read as follows:

408.031. In lieu of the rate established under section 408.030, parties may agree in writing to a fee of ten dollars on any loan; provided, however, that no lender shall permit any borrower to be indebted to such lender on two or more contracts at any given time for the purpose or with the result of contracting for or receiving fees exceeding that permitted by this section. **The limitation on the fee that may be charged under this section does not apply to open-end credit that charges fees in lieu of interest.**

408.096. No person, firm or corporation shall receive or impose any fee or charge ~~other than one expressly provided for~~ **prohibited** by statute~~]~~ for arranging credit in the amount of one thousand dollars or less the proceeds of which are intended to be used by the borrower primarily for personal, family or household purposes. Any contract evidencing such excess fee or charge and any note evidencing credit so arranged is void. Any person, firm or corporation who receives or imposes a fee or charge prohibited by this section is guilty of a class B misdemeanor.

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, **excluding open-end credit not tied to transaction**

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.

4 **accounts at a depository institution or credit card accounts where fees are charged in**
5 **lieu of interest**, except as provided and regulated by sections 367.100 to 367.200 and except:

6 (1) On loans for thirty days or longer which are other than "open-end credit" as such
7 term is defined in the federal Consumer Credit Protection Act and regulations thereunder, a
8 fee, not to exceed ten percent of the principal amount loaned not to exceed one hundred
9 dollars may be charged by the lender; however, no such fee shall be permitted on any
10 extension, refinance, restructure or renewal of any such loan, unless any investigation is made
11 on the application to extend, refinance, restructure or renew 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 loan,
14 and reasonable and bona fide third-party fees incurred for remote or electronic filing, which
15 fees may be collected when the loan is made or at any time thereafter; however, premiums for
16 insurance in lieu of perfecting a security interest required by the lender may be charged if the
17 premium does not exceed the fees which would otherwise 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 to
20 exceed five percent of each installment due or the minimum payment due or fifteen dollars,
21 whichever is greater, not to exceed fifty dollars. If the contract so provides, a charge for late
22 payment on each twenty-five dollars or less installment in default for a period of not less than
23 fifteen days shall not exceed five dollars;

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

28 (5) Charges or premiums for insurance written in connection with any loan against
29 loss of or damage to property or against liability arising out of ownership or use of property as
30 provided in section 367.170; however, notwithstanding any other provision of law, with the
31 consent of the borrower, such insurance may cover property all or part of which is pledged as
32 security for the loan, and charges or premiums for insurance providing life, health, accident,
33 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 the uniform commercial code - secured
36 transactions, sections 400.9-101 to 400.9-809;

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

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

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

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

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

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

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

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.

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