

FIRST REGULAR SESSION

SENATE BILL NO. 385

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

1743S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 365.070, 365.100, 365.140, 408.035, 408.100, 408.140, 408.178, 408.234, 408.250, 408.553, and 408.554, RSMo, and to enact in lieu thereof eleven new sections relating to certain financial transactions.

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

Section A. Sections 365.070, 365.100, 365.140, 408.035,
2 408.100, 408.140, 408.178, 408.234, 408.250, 408.553, and
3 408.554, RSMo, are repealed and eleven new sections enacted in
4 lieu thereof, to be known as sections 365.070, 365.100, 365.140,
5 408.035, 408.100, 408.140, 408.178, 408.234, 408.250, 408.553,
6 and 408.554, to read as follows:

365.070. 1. Each retail installment contract shall be
2 in writing[, shall be signed by both the buyer and the
3 seller,] and shall be completed as to all essential
4 provisions prior to the signing of the contract by the
5 buyer. In addition to the retail installment contract, the
6 seller may require the buyer to execute and deliver a
7 negotiable promissory note to evidence the indebtedness
8 created by the retail installment transaction and the seller
9 may require security for the payment of the indebtedness or
10 the performance of any other condition of the transaction.
11 Every note executed pursuant to a retail installment
12 contract shall expressly state that it is subject to
13 prepayment privilege required by law and the refund required
14 by law in such cases. Any such note, if otherwise

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

15 negotiable under the provisions of sections 400.3-101 to
16 400.3-805, shall be negotiable. The retail installment
17 contract may evidence the security.

18 2. The printed portion of the contract, other than
19 instructions for completion, shall be in at least eight-
20 point type. The contract shall contain the following notice
21 in a size equal to at least ten-point bold type:

22 "Notice to the Buyer.

23 Do not sign this contract before you read
24 it or if it contains any blank spaces.

25 You are entitled to an exact copy of the
26 contract you sign.

27 Under the law you have the right to pay off
28 in advance the full amount due and to obtain a
29 partial refund of the time price differential."

30 3. The contract shall also contain, in a size equal to
31 at least ten-point bold type, a specific statement that
32 liability insurance coverage for bodily injury and property
33 damage caused to others is not included if that is the case.

34 4. The seller shall deliver to the buyer, or mail to
35 him at his address shown on the contract, a copy of the
36 contract signed by the seller. Until the seller does so, a
37 buyer who has not received delivery of the motor vehicle may
38 rescind his agreement and receive a refund of all payments
39 made and return of all goods traded in to the seller on
40 account of or in contemplation of the contract, or if the
41 goods cannot be returned, the value thereof. Any
42 acknowledgment by the buyer of delivery of a copy of the
43 contract shall be in a size equal to at least ten-point bold
44 type and, if contained in the contract, shall appear
45 directly above the buyer's signature.

46 5. The contract shall contain the names of the seller
47 and the buyer, the place of business of the seller, the
48 residence of the buyer and a brief description of the motor
49 vehicle including its make, year model, model and
50 identification numbers or marks.

51 6. The contract shall contain the following items:

52 (1) The cash sale price of the motor vehicle;

53 (2) The amount of the buyer's down payment, and
54 whether made in money or goods, or partly in money and
55 partly in goods, including a brief description of the goods
56 traded in;

57 (3) The difference between items one and two;

58 (4) The aggregate amount, if any, if a separate
59 identified charge is made therefor, included for all
60 insurance on the motor vehicle against loss, damage to or
61 destruction of the motor vehicle, specifying the types of
62 coverage and period;

63 (5) The aggregate amount, if any, if a separate
64 identified charge is made therefor, included for all bodily
65 injury and property damage liability insurance for injuries
66 to the person or property of others, specifying the types of
67 coverage and coverage period;

68 (6) The aggregate amount, if any, if a separate
69 identified charge is made therefor, included for all life,
70 accident or health insurance, specifying the types of
71 coverage and coverage period;

72 (7) The amounts, if any, if a separate identified
73 charge is made therefor, included for other insurance and
74 benefits, specifying the types of coverage and benefits and
75 the coverage periods and separately stating each amount for
76 each insurance premium or benefit;

77 (8) The amount of official fees;

78 (9) The principal balance which is the sum of items
79 (3), (4), (5), (6), (7) and (8);

80 (10) The amount of the time price differential
81 expressed in the contract as a percent per annum;

82 (11) The total amount of the time balance stated as
83 one sum in dollars and cents, which is the sum of items (9)
84 and (10), payable in installments by the buyer to the
85 seller, the number of installments, the amount of each
86 installment and the due date or period thereof based on the
87 contract's original amortization schedule; and

88 (12) The time sale price.

89 The above items need not be stated in the sequence or order
90 set forth.

 365.100. 1. For contracts entered into on or after
2 August 28, 2005, if the contract so provides, the holder
3 thereof may charge, finance, and collect:

4 (1) A charge for late payment on each installment or
5 minimum payment in default for a period of not less than
6 fifteen days in an amount not to exceed five percent of each
7 installment due or the minimum payment due or twenty-five
8 dollars, whichever is less; except that, a minimum charge of
9 ten dollars may be made, or when the installment is for
10 twenty-five dollars or less, a charge for late payment for a
11 period of not less than fifteen days shall not exceed five
12 dollars, provided, however, that a minimum charge of one
13 dollar may be made;

14 (2) Interest on each delinquent payment at a rate
15 which shall not exceed the highest lawful contract rate. In
16 addition to such charge, the contract may provide for the
17 payment of attorney fees not exceeding fifteen percent of
18 the amount due and payable under the contract where the

19 contract is referred for collection to any attorney not a
20 salaried employee of the holder, plus court costs;

21 (3) A dishonored or insufficient funds check fee equal
22 to [such fee] **the reasonable service charge** as provided in
23 [section 408.653] **subdivision (2) of subsection 6 of section**
24 **570.120**, in addition to fees charged by a bank for each
25 check, draft, order or like instrument which is returned
26 unpaid; and

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

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

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

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

365.140. Notwithstanding the provisions of any retail
2 installment contract to the contrary any buyer may prepay in
3 full, whether by payment in cash, extension or renewal, at
4 any time before maturity the debt of any retail installment
5 contract and on so paying the debt shall receive a refund
6 credit thereon for the anticipation of payment. The amount
7 of the refund shall be calculated by the actuarial method.
8 The lender shall retain no more interest than is actually
9 earned whenever a retail installment contract is prepaid.
10 Any insurance rendered unnecessary by reason of prepayment
11 shall be cancelled by the holder and any refund of premiums
12 received by the holder shall be treated in accordance with
13 the provisions of subsection 2 of section 365.080. **Whenever**

14 a retail installment contract is paid in full, the holder
15 shall provide the buyer proof of payment in full which may
16 be by letter referencing the retail installment contract or
17 by returning the original or a copy of the contract marked
18 by the holder, paid in full.

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

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

7 (2) [Business loan of five thousand dollars or more]
8 **An extension of credit primarily for business, commercial,**
9 **or agricultural purposes;**

10 (3) Real estate loan, other than residential real
11 estate loans and loans of less than five thousand dollars
12 secured by real estate used for an agricultural activity; or

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

408.100. This section shall apply to all loans which
2 are not made as permitted by other laws of this state except
3 that it shall not apply to loans which are secured by a lien
4 on real estate[, nonprocessed farm products, livestock, farm
5 machinery or crops or to loans to corporations]. On any
6 loan subject to this section, any person, firm, or
7 corporation may charge, contract for and receive interest on
8 the unpaid principal balance at rates agreed to by the
9 parties.

408.140. 1. No further or other charge or amount
2 whatsoever shall be directly or indirectly charged,

3 contracted for or received for interest, service charges or
4 other fees as an incident to any such extension of credit
5 except as provided and regulated by sections 367.100 to
6 367.200 and except:

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

17 (2) The lawful fees, **including reasonable and bona**
18 **fide third party fees incurred**, actually and necessarily
19 paid out by the lender to any public officer for filing,
20 recording, or releasing in any public office any instrument
21 securing the loan, which fees may be collected when the loan
22 is made or at any time thereafter; however, premiums for
23 insurance in lieu of perfecting a security interest required
24 by the lender may be charged if the premium does not exceed
25 the fees which would otherwise be payable;

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

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

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

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

53 (7) Charges assessed by any institution for processing
54 a refused instrument plus a [handling fee] **reasonable**
55 **service charge** of not more than [twenty-five dollars] **that**
56 **which is permitted pursuant to subdivision (2) of subsection**
57 **6 of section 570.120;**

58 (8) If the contract or promissory note, signed by the
59 borrower, provides for attorney fees, and if it is necessary
60 to bring suit, such attorney fees may not exceed fifteen
61 percent of the amount due and payable under such contract or
62 promissory note, together with any court costs assessed.
63 The attorney fees shall only be applicable where the
64 contract or promissory note is referred for collection to an
65 attorney, and is not handled by a salaried employee of the
66 holder of the contract;

67 (9) Provided the debtor agrees in writing, the lender
68 may collect a fee in advance **once in any twelve-month period**
69 **including any successive twelve-month period** for allowing
70 the debtor to defer up to three monthly loan payments, so
71 long as the fee is no more than the lesser of fifty dollars
72 or ten percent of the loan payments deferred[,] **and** no
73 extensions are made until the first loan payment is
74 collected [and no more than one deferral in a twelve-month
75 period is agreed to and collected on any one loan;]. This
76 subdivision applies to nonprecomputed loans only and does
77 not affect any other subdivision;

78 (10) If the open-end credit contract is tied to a
79 transaction account in a depository institution, such
80 account is in the institution's assets and such contract
81 provides for loans of thirty-one days or longer which are
82 "open-end credit", as such term is defined in the federal
83 Consumer Credit Protection Act and regulations thereunder,
84 the creditor may charge a credit advance fee of up to the
85 lesser of seventy-five dollars or ten percent of the credit
86 advanced from time to time from the line of credit; such
87 credit advance fee may be added to the open-end credit
88 outstanding along with any interest, and shall not be
89 considered the unlawful compounding of interest as specified
90 under section 408.120;

91 (11) A deficiency waiver addendum, guaranteed asset
92 protection, or a similar product purchased as part of a loan
93 transaction with collateral and at the borrower's consent,
94 provided the cost of the product is disclosed in the loan
95 contract, is reasonable, and the requirements of section
96 408.380 are met;

97 (12) A convenience fee for payments using an
98 alternative payment channel that accepts a debit or credit

99 card not present transaction, nonface-to-face payment,
100 provided that:

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

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

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

114 3. Notwithstanding any other provision of law to the
115 contrary, in addition to charges allowed pursuant to section
116 408.100, an open-end credit contract provided by a company,
117 financial institution, savings and loan or other credit
118 issuing company which is regulated pursuant to this chapter
119 may charge an annual fee not to exceed fifty dollars.

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

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

2.] A lender may take a security interest in any
6 collateral in conjunction with residential real estate in
7 connection with a second mortgage loan.

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

[4.] 3. When fees charged need not be disclosed in the
18 annual percentage rate required by Title 15, U.S.C. Sections
19 1601, et seq., and regulations thereunder because such fees
20 are de minimus amounts or for other reasons, such fees need
21 not be included in the annual percentage rate for state
22 examination purposes.

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

(1) "Cash sale price" means the price stated in a
7 retail time transaction for which the seller would have sold
8 or furnished to the buyer, and the buyer would have bought
9 or obtained from the seller, the goods or services which are
10 the subject matter of the retail time transaction, if such

11 sale were for cash. The cash sale price may include the
12 cost of taxes, official fees, if any, and charges for
13 accessories and their installation and delivery, and for the
14 servicing, repairing or improving of goods. If a retail
15 time transaction involves the repair, modernization,
16 alteration or rehabilitation of real property, the cash sale
17 price may include reasonable fees and costs actually to be
18 paid for construction permits and similar fees, the services
19 of an attorney and any title search and title insurance
20 relating to any mortgage, lien or other security interest
21 taken, granted or reserved pursuant to contract;

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

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

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

41 (5) "Holder" of a retail time contract means the
42 retail seller of the goods or services under the contract

43 or, if the contract is purchased or otherwise acquired, the
44 person purchasing or otherwise acquiring the contract;

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

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

56 (8) "Official fees" means the fees prescribed by law
57 for filing, recording or otherwise perfecting and releasing
58 or satisfying any title or lien retained or taken by a
59 seller in connection with a retail time transaction,
60 **including official fees or reasonable and bona fide third**
61 **party fees incurred for remote electronic filing or**
62 **recording;**

63 (9) "Person" means an individual, partnership,
64 corporation, association, and any other group however
65 organized;

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

73 (11) "Retail buyer" or "buyer" means a person who buys
74 goods or obtains services to be used primarily for personal,

75 family, or household purposes and not primarily for
76 business, commercial, or agricultural purposes from a retail
77 seller in a retail time transaction;

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

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

95 (14) "Retail time contract" means an agreement
96 evidencing one or more retail time transactions entered into
97 in this state pursuant to which a buyer engages to pay in
98 one or more deferred payments the time sale price of goods
99 or services. The term includes a chattel mortgage;
100 conditional sales contract; and a contract for the bailment
101 or leasing of goods by which the bailee or lessee contracts
102 to pay as compensation for their use a sum substantially
103 equivalent to or in excess of their cash sale price and by
104 which it is agreed that the bailee or lessee is bound to
105 become, or, for no further or a merely nominal consideration

106 has the option of becoming, the owner of the goods upon full
107 compliance with the provisions of the contract;

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

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

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

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

408.553. Upon default the lender shall be entitled to
2 recover [no more than the amount which the borrower would
3 have been required to pay upon prepayment of the obligation
4 on the date of final judgment together with interest
5 thereafter at] **the amount due and accrued under the**

6 **agreement, including interest and penalties, through the**
7 **date of a final judgment and following a judgment the lender**
8 **may additionally recover** the simple interest equivalent of
9 the rate provided in the contract **as applied to the amount**
10 **of the judgment until the date the judgment is paid and**
11 **satisfied.**

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

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

18 (name, address, and telephone number of
19 lender)

20 (account number, if any)

21 (brief identification of credit transaction)

22 (amount) is the AMOUNT NOW DUE

23 (date) is the LAST DAY FOR PAYMENT

24 You are late in making your payment(s). If
25 you pay the AMOUNT NOW DUE (above) by the LAST
26 DAY FOR PAYMENT (above), you may continue with

27 the contract as though you were not late. If
28 you do not pay by that date, we may exercise our
29 rights under the law.

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

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

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

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

46 4. If a credit transaction is secured, the notice
47 described in this section shall further state the following:

48 "If you voluntarily surrender possession of
49 the following specified collateral, you could
50 still owe additional money after the money
51 received from the sale of the collateral is
52 deducted from the total amount you owe."

53 [5. In the case of a second default on the same loan
54 made pursuant to section 408.100 or on the same retail time
55 transaction as defined in section 408.250 or in the case of
56 a third default on the same second mortgage loan as defined
57 in section 408.231, the notice described in subsection 2 of

58 this section shall indicate that in the case of further
59 default, the borrower will have no right to cure.]

✓