

MISSOURI FINANCING INSTITUTION LICENSING LAW

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364.010. Citation of law. - This chapter may be cited as the "Missouri Financing Institution Licensing Law".
(L. 1963 p. 463 § 1)

364.020. Definitions. - Unless otherwise clearly indicated by the context, when used in this chapter the following terms mean:

(1) **"Director"**, the office of the director of the division of finance.

(2) **"Financing institution"**, a person engaged in the business of purchasing or otherwise acquiring retail time contracts or accounts under retail charge agreements from one or more sellers. The term includes but is not limited to a bank, trust company, loan and investment company, savings and loan association, licensed sales finance company as the same is defined in the Missouri motor vehicle time sales law (chapter 365, RSMo) or registrant under sections 367.100 to 367.200, RSMo, if so engaged; but does not include a distributor insofar as he takes assignments of retail installment purchase contracts covering goods which were distributed by him to the retailer thereof.

(3) **"Person"**, an individual, partnership, corporation, association, and any other group however organized. Words used herein shall have the same meaning as is ascribed to such words in the Missouri retail credit sales law (sections 408.250 to 408.370, RSMo).
(L. 1963 p. 463 § 2)

364.030. Financial institutions to obtain license, exceptions - application - fee. - 1. No person shall engage in the business of a financing institution in this state without a license therefor as provided in this chapter; except, however, that no bank, trust company, loan and investment company,

licensed sales finance company, registrant under the provisions of sections 367.100 to 367.200, or person who makes only occasional purchases of retail time contracts or accounts under retail charge agreements and which purchases are not being made in the course of repeated or successive purchase of retail installment contracts from the same seller, shall be required to obtain a license under this chapter but shall comply with all the laws of this state applicable to the conduct and operation of a financing institution.

2. The application for the license shall be in writing, under oath and in the form prescribed by the director. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, and other pertinent information as the director may require.

3. The license fee for each calendar year or part thereof shall be the sum of six hundred dollars for each place of business of the licensee in this state which shall be paid into the general revenue fund. The director may establish a biennial licensing arrangement but in no case shall the fees be payable for more than one year at a time.

4. Each license shall specify the location of the office or branch and must be conspicuously displayed therein. In case the location is changed, the director shall either endorse the change of location of the license or mail the licensee a certificate to that effect, without charge.

5. Upon the filing of an application, and the payment of the fee, the director shall issue a license to the applicant to engage in the business of a financing institution under and in accordance with the provisions of this chapter for a period which shall expire the last day of December next following the date of its issuance. The license shall not be transferable or assignable. No licensee shall transact any business provided for by this chapter under any other name.

(L. 1963 p. 463 § 3, A.L. 1986 H.B. 1195, A.L. 2003 S.B. 346, A.L. 2015 H.B. 587 merged with S.B. 345, A.L. 2023 S.B. 13)

364.040. License denied or suspended, grounds - hearing and review. - 1. Renewal of a license originally granted under this chapter may be denied, or a license may be

suspended or revoked by the director on the following grounds:

(1) Material misstatement of fact in any application for license under this chapter;

(2) Willful failure to comply with provisions of this chapter relating to retail time transactions;

(3) Defrauding any retail buyer to the buyer's damage;

(4) Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to a buyer under the Missouri retail credit sales law (sections 408.250 to 408.370, RSMo).

2. If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has so acted or failed to act as would be cause for suspending or revoking a license to the party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee, after actual knowledge of the acts, retained the benefits, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

3. No license shall be denied, suspended or revoked except after hearing thereon. The hearing and review thereof shall be conducted according to chapter 536, RSMo.

(L. 1963 p. 463 § 4)

364.050. Director may investigate - buyer may make complaint. - 1. The director, or his

duly authorized representatives, shall have full power and authority at any time to make any investigation considered necessary of financing institutions and of other persons having personal knowledge of the matters under investigation and, to the extent necessary for this purpose, may compel the production of all relevant books, records, accounts and documents of financing institutions and other persons with respect to their retail time transactions.

2. Any buyer having reason to believe that his retail time transaction with respect to the Missouri retail credit sales law (sections 408.250 to 408.370, RSMo) has been violated may file with the director a written complaint setting forth the details of the alleged violation, and the director, upon receipt of the complaint, may inspect the pertinent books, records, letters and contracts of the financing institution and of the seller involved relating to the specific written complaint.

(L. 1963 p 463 § 5)

364.060. Director may promulgate rules and regulations, issue subpoenas - enforcement - rulemaking, procedure, generally, this chapter.

- 1. The director shall have the power to adopt and promulgate all rules and regulations necessary to carry out the intent and purposes of this chapter. A copy of every rule or regulation shall be mailed to each financing institution, postage prepaid, at least fifteen days in advance of its effective date; except, however, the failure of a financing institution to receive a copy of the rules or regulations shall not exempt it from the duty of compliance with the rules and regulations lawfully promulgated hereunder.

2. The director shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to this chapter. The director shall have the power to administer oaths and affirmations to any persons whose testimony is required.

3. If any person refuses to obey any such subpoena, or to give testimony or to produce evidence as required thereby, any judge of the circuit court of the county in which the licensed premises are located may, upon application and proof of the refusal, make an order awarding process of subpoena, or subpoena duces tecum, for the witness to appear before the director and to give testimony, and to produce evidence as required thereby. Upon filing the order in the office of the clerk of the court, the clerk shall issue process of subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place therein designated.

4. If any person served with any subpoena shall refuse to obey and to give testimony, and to produce evidence as required thereby, the director may apply to the judge of the court issuing the subpoena for an attachment against the person as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an attachment, directed to any sheriff, constable or police officer, for the arrest of the person, and upon his being brought before the judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to the subpoena, and the answering of any question, and the production of any evidence, that may be proper by a fine, not exceeding one hundred dollars or by imprisonment in the county jail, or by both fine and imprisonment, and to compel the witness to pay the costs of the proceeding to be taxed.

5. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1963 p. 463 § 6, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

364.070. Penalties. - Any person who knowingly violates any provision of this chapter or of any law of this state relating to the business of a financing institution in this state without a license therefor except as provided in this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars or by confinement in the county jail for not more than six months or both.

(L. 1963. p. 463 § 7)

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

(1) **"Cash sale price"** means the price stated in a retail time transaction for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail time transaction, if such sale were for cash. The cash sale price may include the cost of taxes, official fees, if any, and charges for accessories and their installation and delivery, and for the servicing, repairing or improving of goods. If a retail time transaction involves the repair, modernization, alteration or rehabilitation of real property, the cash sale price may include reasonable fees and costs actually to be paid for construction permits and similar fees, the services of an attorney and any title search and title insurance relating to any mortgage, lien or other security interest taken, granted or reserved pursuant to contract;

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

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

(4) **"Goods"** means all tangible chattels personal and merchandise certificates or coupons

issued by a retail seller exchangeable for tangible chattels personal of such seller, but the term does not include motor vehicles, nonprocessed farm products, livestock, money, things in action, or intangible personal property. The term includes tangible chattels personal which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom;

(5) **"Holder"** of a retail time contract means the retail seller of the goods or services under the contract or, if the contract is purchased or otherwise acquired, the person purchasing or otherwise acquiring the contract;

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

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

(8) **"Official fees"** means the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail time transaction;

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

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

(11) **"Retail buyer"** or **"buyer"** means a person who buys goods or obtains services to be used primarily for personal, family, or household purposes and not primarily for business, commercial, or agricultural purposes from a retail seller in a retail time transaction;

(12) **"Retail charge agreement"** means an agreement entered into in this state between a retail seller and a retail buyer prescribing the terms of retail time transactions to be made from time to time pursuant to such agreement, and which provides for a time charge

to be computed on the buyer's total unpaid balance from time to time;

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

(14) **"Retail time contract"** means an agreement evidencing one or more retail time transactions entered into in this state pursuant to which a buyer engages to pay in one or more deferred payments the time sale price of goods or services. The term includes a chattel mortgage; conditional sales contract; and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their cash sale price and by which it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract;

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

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

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

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

(L. 1961 p. 638 § 2, A.L. 1974 S.B. 427, A.L. 1975 S.B. 71, A.L. 1979 S.B. 305, A.L. 1982 H.B. 1341, et al., A.L. 1989 H.B. 346, A.L. 2010 S.B. 630)

408.260. Time contract, how executed - required contents - additional notes to cut off buyer's rights prohibited - waiver of buyer's legal remedies prohibited.

- 1. Each retail time contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed prior to the signing of the contract by the buyer. In addition to such retail time contract, the seller may require the buyer to execute and deliver a negotiable promissory note to evidence the obligation created by the retail time contract, and the seller may require security for the payment of such obligation or the performance of any other condition of the contract, in which case the retail time contract may evidence such security. The fact that a note given to evidence a retail time contract contains the matters and things which sections 408.250 to 408.370 require be included in a retail time contract shall not render such note nonnegotiable under any of the provisions of article 3 of chapter 400, RSMo, if such note is not otherwise nonnegotiable under said chapter. Any such additional document or documents shall be completed prior to the signing thereof by the buyer. No retail time contract shall require or entail the execution by the buyer of any note or series of notes which, when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the seller.

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

"NOTICE TO THE BUYER:

(1) DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES.

(2) YOU ARE ENTITLED TO AN EXACT COPY OF THE CONTRACT YOU SIGN.

(3) UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CIRCUMSTANCES TO OBTAIN A PARTIAL REFUND OF THE TIME CHARGE."

3. The seller shall deliver to the buyer, or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the goods or been

furnished the services shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. The buyer's acknowledgment, conforming to the requirements of this subsection 3, of delivery of a copy of the contract shall be conclusive proof of such delivery, and that the contract when signed did not contain any blank spaces except as provided in subsection 7 or section 408.270, and of compliance with this section in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchases the contract.

4. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence of the buyer as specified by the buyer and a brief description of the goods sold or services furnished or to be furnished, and shall clearly state and describe any collateral security taken for the buyer's obligation.

5. The contract shall contain the following items:

(1) The cash sale price of the goods or services;

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

(3) The difference between items (1) and (2);

(4) The amount, if any, if a separate charge is made therefor, included for insurance and other benefits, specifying the types of coverage and benefits and the coverage periods and separately stating each amount for each insurance premium or benefit;

(5) The amount of official fees;

(6) The principal balance which is the sum of items (3), (4) and (5);

(7) The amount of the time charge;

(8) The amount of the time balance, which is the sum of items (6) and (7), payable in one or more deferred payments by the buyer to the seller, and the amount of each such payment and the due date or period thereof;

(9) The time sale price.

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

6. A retail time contract need not be contained in a single document. If the contract is

contained in more than one document, then one such document may be an original document applicable to purchases of goods or services to be made by the retail buyer from time to time and in such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this section and shall constitute the retail time contract for each such purchase.

7. No retail time contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due dates of the payments may be inserted in the contract after its execution.

8. Upon written request from the buyer the holder of a retail time contract shall give or forward to the buyer a written statement of the dates and amounts of payments received and charges imposed and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payments when made in cash.

9. No provision in a retail time contract relieving the seller from liability for any legal remedies which the buyer may have against the seller under the contract or any separate instrument executed in connection therewith shall be enforceable.

10. After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer the holder shall deliver or mail to the buyer at his last known address one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

11. No retail time contract shall contain any provision by which the buyer agrees to relieve the seller, assignee or holder of any liabilities, or whereby the buyer agrees to waive any claim, rights or legal remedies which the buyer may have against the seller, assignee or holder under the retail time contract.

(L. 1961 p. 638 § 4, A.L. 1965 p. 95, A.L. 1975 S.B. 71)

408.270. Retail time contracts negotiated by mail - delivery unnecessary - notice of insertions in blanks. - Retail time contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon the

catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of sections 408.250 to 408.370 shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 408.260 and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in section 408.260, the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

(L. 1961 p. 638 § 4)

408.280. Insurance purchased to secure retail time contract, regulation. - 1. The amount, if any, included for insurance, if a separate identified charge is made for the insurance, which insurance may be purchased by the seller or other person holding a retail time contract or account under a retail charge agreement, shall not exceed the applicable premium chargeable in accordance with the rates approved by the department of commerce and insurance of this state where such rates are required by law to be approved by such department. All insurance shall be written by an insurance company authorized to do business in this state and all policies written in this state shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state, unless otherwise provided by law. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or other person holding a retail time contract or account under a retail charge agreement, as well as the buyer, but such insurance shall be subject to limitations provided for in regulations promulgated and issued by the director of finance pursuant to the provisions of subsection 3 of this section. An additional charge may be made for insurance written in connection with the retail time contract which provides involuntary unemployment coverage.

2. The seller or other person holding a retail time contract or account under a retail charge agreement shall, within thirty days after provision for any insurance is agreed to by the buyer, send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, clearly setting

forth the amount of the premium, the kind or kinds of insurance, the coverage and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary of the certificate.

3. The amount of any life insurance shall not exceed the amount of the total unpaid balance from time to time under a retail time contract or under a retail charge agreement, except that where the buyer's obligation under a retail time contract is repayable in payments which are not substantially equal in amount, such insurance may be level term insurance in an amount which shall not exceed by more than five dollars the time balance as determined under subsection 5 of section 408.260. The director of finance, or such agency or agencies as may exercise the powers and duties now performed by such director, shall issue regulations providing for and governing the types and limits of all other insurance and the issuance of policies in connection with retail time transactions. Nothing in this section shall alter or amend the statutes of this state relating to insurance or affect the powers of the director of the department of commerce and insurance under such statutes.

4. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company, except that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonably or arbitrarily withheld, and further, that the inclusion of the cost of the insurance premium in the retail time contract when the buyer selects his agent, broker or company shall be optional with the seller.

5. If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing payments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

(L. 1961 p. 638 § 5, A.L. 1989 H.B. 615 & 563)

408.290. Retail charge agreement - form - delivery to buyer - contents. - 1. Every retail charge agreement shall be in writing and shall be signed by the retail buyer. A copy of any such agreement executed on or after October 13, 1961, shall be delivered or mailed to the retail buyer by the retail seller prior to the date on which

the first payment is due thereunder. An acknowledgment of the delivery thereof contained in the body of the agreement shall be conclusive proof of delivery in any action. All agreements executed on or after said date shall state the amount or rate of the time charge to be charged and paid pursuant thereto or shall state that a time charge not in excess of that permitted by law will be charged and paid pursuant thereto; and may in the event of default of any payment required by the agreement, provide for the payment of attorney fees not exceeding fifteen percent of the total unpaid balance where such balance is referred for collection to an attorney not a salaried employee of the seller and for court costs.

2. The retail seller under a retail charge agreement shall promptly supply the retail buyer under such agreement with a statement at the time of sale or as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon by the retail seller and the retail buyer in which there is any unpaid balance thereunder, which shall recite the following:

(1) The total unpaid balance under the retail charge agreement at the beginning and end of the period;

(2) Unless otherwise furnished by the retail seller to the retail buyer by sales slip, memorandum, or otherwise, a description of the goods or services purchased, the cash sale price and the date of each purchase;

(3) The payments made by the retail buyer to the retail seller and any other credits to the retail buyer during the period;

(4) The amount of the time charge, if any;

(5) A legend to the effect that the retail buyer may at any time pay his total unpaid balance.

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

(L. 1961 p. 638 § 6, A.L. 1975 S.B. 71)

408.300. Time charges, amount authorized on retail time contracts - retail charge agreements, time charges authorized. - 1.

Notwithstanding the provisions of any other law, the seller or other holder under a retail time contract may charge, receive and collect a time charge, which shall be in lieu of any interest charges, except such as may arise under the terms of sections 408.250 to 408.370 after maturity of the time contract and which charge shall not exceed the amount agreed to by the parties to the retail time contract. The time charge under this subsection shall be computed on the principal balance of each transaction, as determined under subsection 5 of section 408.260, on contracts payable in successive monthly payments

substantially equal in amount from the date of the contract to the maturity of the final payment, notwithstanding that the total time balance thereof is required to be paid in one or more deferred payments, or if goods are delivered or services performed more than ten days after that date, with the date of commencement of delivery of goods or performance of services to the maturity of the final payment. When a retail time contract provides for payment other than in substantially equal successive monthly payments, the time charge shall not exceed the amount which will provide the same return as is permitted on substantially equal monthly payment contracts. Each day may be counted as one-thirtieth of a month. In lieu of any other charge, a minimum time charge of twelve dollars may be charged, received, and collected on each such contract.

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

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

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

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

4. No provision of this section 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

consent, provided the cost of the product is disclosed in the loan contract, is reasonable, and the requirements of section 408.380 are met.

(L. 1961 p. 638 § 7, A.L. 1975 S.B. 71, A.L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1981 H.B. 256, A.L. 1985 H.B. 358 & 440, A.L. 1996 S.B. 898, A.L. 2011 S.B. 83)

408.310. Assignments of retail time contracts and charge agreements - notice to buyer, effect.

- Any person may purchase or acquire or agree to purchase or acquire from any seller any retail time contract or account under a retail charge agreement on such terms and conditions and at such price as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the purchaser or other assignee maintain dominion over the payments or the goods if repossessed shall not be necessary to the validity of a written assignment of such a contract or account as against creditors, subsequent purchasers, pledges, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract or account, payment thereunder made by the buyer to the seller or to the last known purchaser or other assignee of such contract or account shall be binding upon all subsequent purchasers or other assignees.

(L. 1961 p. 638 § 8)

408.320. Buyer may pay retail time contract debt before maturity - refund of charges.

- Notwithstanding the provisions of any retail time contract to the contrary, any buyer may prepay in full at any time before maturity the debt of any retail time contract and on so paying such debt shall receive a refund credit thereof for such anticipation of payments. The amount of such refund shall be calculated by the actuarial method. The lender shall retain no more interest than is actually earned whenever a retail time contract is prepaid.

(L. 1961 p. 638 § 9, A.L. 1986 H.B. 1207, A.L. 2002 S.B. 895)

408.330. Delinquency and collection charges permitted - insurance premium in lieu of perfecting security interest authorized - attorney fees - consolidation of contracts - convenience fee, when.

- 1. If a retail time contract or a retail charge agreement so provides, the holder thereof may charge and collect:

(1) A premium for insurance in lieu of charges for perfecting a security interest required by the lender if the premium does not exceed the fees which would otherwise be payable;

(2) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than fifteen dollars;

(3) A delinquency and collection charge on each installment in default for a period of not less than ten days in an amount not to exceed ten dollars or five dollars when the monthly installment is less than twenty-five dollars; or

(4) Interest on each delinquent payment thereunder at a rate which will not exceed the highest lawful contract rate. In addition to such delinquency charge, the contract may provide for the payment of attorney fees not exceeding fifteen percent of the amount due and payable under such contract where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs.

2. The parties to a retail time contract who have entered into more than one contract at substantially different times may agree to consolidate such contracts resulting in a single schedule of payments; provided, however, that the time charge on the new unpaid balance shall not exceed the maximum specified in section 408.300.

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

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

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

(L. 1961 p. 638 § 10, A.L. 1975 S.B. 71, A.L. 1989 H.B. 386 merged with S.B. 192, A.L. 1990 H.B. 1788, A.L. 1992 S.B. 705, A.L. 1994 S.B. 718, A.L. 2017 H.B. 292)

408.340. Applicability to prior transactions. - The provisions of sections 408.250 to 408.370 shall not apply to retail time transactions consummated prior to the effective date hereof; provided, however, that with respect to any sale made subsequent to the effective date hereof pursuant to a retail charge agreement entered into prior to the effective date hereof, the provisions of sections 408.250 to 408.370 shall apply if (1) prior to the making of such sale the seller shall have delivered or mailed to the buyer a copy of a retail charge agreement, duly executed on behalf of the seller, conforming, except for the buyer's signature, with the provisions of section 408.290, and (2) the seller thereafter complies

with all the other provisions of sections 408.250 to 408.370.

(L. 1961 p. 638 § 13)

408.350. Waiver of provisions void. - Any waiver of the provisions of sections 408.250 to 408.370 shall be unenforceable and void.

(L. 1961 p. 638 § 12)

408.360. Citation of law. - Sections 408.250 to 408.370 may be cited as the "Missouri Retail Credit Sales Law".

(L. 1961 p. 638 § 1)

408.365. Acceleration clauses, repossession or confession of judgment by power of attorney, right of entry to repossess and waiver of damages from repossession provisions, prohibited. - 1. No retail time contract shall contain any provision by which in the absence of the buyer's default in the performance of any of his obligations, the seller or holder may arbitrarily and without reasonable cause accelerate the maturity of any part or all of the amount owing thereunder.

2. No retail time contract or retail charge agreement shall contain any provision by which:

(1) A power of attorney is given to confess judgment, or an assignment of wages is given;

(2) The seller or holder of the contract or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods;

(3) The buyer waives any right of action against the seller or holder of the contract or other person acting on his behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of goods; or

(4) The buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or in the repossession of goods.

(L. 1975 S.B. 71)

408.370. Violation, penalty - effect on time and other charges - correction. - 1. Any person who shall knowingly violate any provision of section 408.250 and sections 408.260 to 408.370 shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or both.

2. Any person violating sections 408.260 to and including 408.330, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any time charge, delinquency or collection charge on the contract.

3. Notwithstanding the other provisions of this section, the failure to comply with any provision of section 408.250 and sections 408.260 to 408.370 with respect to any retail time transaction may be corrected by the seller, or other person holding the retail time contract or account under a retail charge agreement, at any time after the execution thereof, but in any event not later than ten days after such person shall have been notified thereof in writing by the buyer, and, if so corrected, such person shall not be subject to any criminal penalty, civil forfeiture, or private cause of action under sections 408.250 to 408.370 for such failure.

4. Any buyer, who suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment of any method, act or practice in violation of section 408.250 and sections 408.260 to 408.370, which is not restored by action taken pursuant to subsection 3 of this section, may bring a private cause of action pursuant to section 407.025, RSMo.

5. No private action for the recovery of damages under the provisions of subsection 4 of this section shall be commenced after three years from the date of the last method, act, or practice in violation of sections 408.250 to 408.260, 408.290, 408.300, 408.330, 408.365 and 408.370. The limitation on the commencement of action provided in this subsection shall be tolled for the same reason and in the same manner as other limitations on the bringing of actions under the provisions of chapter 516, RSMo.

(L. 1961 p. 638 § 11, A.L. 1975 S.B. 71)

408.375. Retail installment agreement, deemed signed or accepted, when. - As used in sections 408.250 to 408.370, a retail installment agreement shall be deemed to be signed or accepted by the buyer, if after a request for a retail installment account, the agreement or application for a retail installment account is in fact signed by the buyer, or if the retail installment account is used by the buyer, or if the retail installment account is used by another person authorized by the buyer to use it.

(L. 1998 H.B. 1189 § 1)

408.380. Sale of certain financial products and plans associated with certain loan transactions not prohibited.

- 1. Notwithstanding any provision of sections 408.140, 408.233, 408.300, or any other law to the contrary, no provision of such sections 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 consent, provided the cost of the product is reasonable and is disclosed in the loan contract. The borrower's consent to the purchase of the deficiency waiver addendum, guaranteed asset protection, or a similar product shall be in writing and acknowledge receipt of the required disclosures by the borrower. The creditor shall retain a copy for the file.

2. Each deficiency waiver addendum, guaranteed asset protection, or other similar product shall provide that in the event of termination of the product prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for such product shall be paid or credited promptly to the person entitled thereto; provided, however, that no refund of less than one dollar need be made. The formula to be used in computing the refund shall be the pro rata method.

3. Any debtor may cancel a deficiency waiver addendum, guaranteed asset protection, or other similar product within fifteen days of its purchase and shall receive a complete refund or credit of premium. This right shall be set forth in the loan contract, or by separate written disclosure. This right shall be disclosed at the time the debt is incurred in ten-point type and in a manner reasonably calculated to inform the debtor of this right.

(L. 2011 S.B. 83)

20 CSR 1140-3.020 Recordkeeping

PURPOSE: Retail credit financing institutions are subject to examination by the Division of Finance for the purpose of determining whether such companies are complying with the provisions of Chapter 364, RSMo, sections 408.250 through 408.370, RSMo, and other laws relating to retail credit financing. In addition, such companies are subject to regulation by the Division of Finance with respect to their financing activities and the sale of insurance in connection with these financing activities. The purpose of this rule is to establish minimum recordkeeping requirements facilitate examination by the Division of Finance.

(1) Books and Records. No special system of records is required by the commissioner of finance. The records of a financing institution will be considered sufficient if they include a cash journal, double entry general ledger or a comparable record and an individual account ledger. The records of the

business of each registered office shall be maintained so that the assets, liabilities, income and expense may be readily segregated.

(2) Cash Journal. A cash book or cash journal shall contain a chronological record of the receipt and disbursement all funds including refunds, title transfer fees and all other items of receipt or expenditure incidental to the granting or collection of a retail time contract or retail charge agreement and replevin, repossession or sale of collateral.

(3) General Ledger. The general ledger shall be posted at least monthly. A trial balance sheet and profit and loss statement shall be available to the examiner. Where the general ledger is kept at a central office other than the location of the registered office, the central office shall provide information required by this section.

(4) Account Ledger. The individual ledger, preferably individual account card, shall be kept for each individual contract or charge agreement. Such ledger card or sheet shall set forth not less than the following items:

(A) Brief description of security pledged on contract agreement;

(B) Account number;

(C) Name and address of retail buyer and of the retail seller;

(D) Date of contract or charge agreement;

(E) Date when first and subsequent payments are due;

(F) Number installments;

(G) Amount of installments;

(H) Date payments received;

(I) The amount of charge for life insurance, if sold in connection with the contract, specifying type, period and amount of coverage;

(J) The amount of charge for accident and health insurance, if sold in connection with the contract, specifying type, period and amount of coverage;

(K) The amount of charge for property insurance, if sold in connection with the contract, specifying type, period and amount of coverage;

(L) The amount of official fees;

(M) The principal amount of the contract or agreement;

(N) The time charge;

(O) The total of the principal and time charge;

(P) Amount paid on principal when face of contract does not include interest;

(Q) Amount paid interest when interest is not added to principal;

(R) The unpaid balance of the contract agreement; and

(S) The date and amount of any additional fee collected for delinquency or collection.

(5) Index. The holder of a retail time contract or retail charge agreement shall maintain a file which shall index alphabetically each retail buyer and contain not less than the following information: name of retail buyer, address of retail buyer, date of contract, account number and date paid in full. A separate index shall be kept on open contracts or agreements and those paid in full.

(6) Account Number. Each retail time contract retail charge agreement shall bear a number which corresponds to the account number

(7) Records Available. All books, records and paper including the contracts, applications, assignments bills of sale, mortgages, record of all insurance policies issued by or through the holder or seller as agent or broker in connection with the contract, shall kept in the office of the holder and made available to the examiner of the Division of Finance for examination at any time without previous notice. When contracts are hypothecated or deposited with a financial institution or parties in connection with credit, access must be provided for the examination when the institution holding those contracts is situated in Missouri. When the institution or person holding those contracts is not so situated or access is not provided, the holder shall obtain from such institution or person either a monthly list of contracts held or a copy of the lists of contracts deposited and withdrawn; such lists to show date, original amount, name or number of account and bear authorized signature of the institution or person.

(8) Handling of Errors. When an error is made on the individual ledger or general ledger, a single thin line, preferably in red, shall be drawn through the improper entry and the correct entry mad the following line. No erasure whatsoever shall be made in any account of record.

(9) Preservation Records. The holder of a retail time contract or retail charge agreement shall keep all records on contracts or agreements available for examination for a period of two (2) years from the date of final payment.

(10) Contracts Paid in Full. When a retail time contract or retail charge agreement is paid in full it shall be the responsibility of the holder to mark the original contract paid in full and return it to the buyer.

(11) Contracts Paid in Full Before Maturity. When a retail time contract or retail charge agreement is paid in full before maturity the individual ledger shall show not less than the following information:

- (A) The date paid in full;
- (B) The amount of interest refunded; and
- (C) The amount of each type of insurance refund, if sold in connection with the contract, shall be shown separately.

(12) Contracts Pan Full by Life Insurance. If a retail time contract or retail charge agreement is paid upon the death of the buyer by credit life insurance sold in connection with the contract a death claim file shall be maintained containing not less than the following information:

- (A) The individual ledger;
- (B) Copy of the insurance policy or certificate;
- (C) Copy of the contract;
- (D) Copy of the death certificate;
- (E) Copy of all checks issued by the insurance company;
- (F) Copy of all checks issued by the holder in connection with the claim; and
- (G) All refunds shall be calculated as of the date of death of the buyer.

AUTHORITY: section 364.060, RSMo 1986.* This rule originally filed as 4 CSR 140-3.020. Original rule filed Jan. 14, 1977, effective April 15, 1977. Moved to 20 CSR 11403.020, effective Aug. 28, 2006.

*Original authority: 364.060, RSMo 1963, amended 1993, 1995.

20 CSR 1140-3.030 Licensing

PURPOSE: Retail credit financing institutions are subject to examination by the Division of Finance for the purpose of determining whether such companies are complying with the provisions of Chapter 364, RSMo, sections 408.250 through 408.370, RSMo and other laws relating to retail credit financing. In addition, such companies are subject to regulation by the Division of Finance with respect to their financing activities and the sale of insurance in connection with these financial activities. The purpose of this rule is to establish guidelines for required licensing.

(1) Any location at which a financing institution permits any person to accept or execute any forms of documents relating to retail credit sales financing other than the place of business recited in the financing institution's registration certificate shall be deemed to be a place of business of the financing institution and shall require a separate certificate of registration; provided, however, that no merchant dealing with retail time sales contracts issued to finance such

merchant's own sales from inventory shall be considered to be doing business in behalf of the financial institution.

AUTHORITY: section 364.060, RSMo 1986.* This rule originally filed as 4 CSR 140-3.030. Original rule filed Jan. 14, 1977, effective April 15, 1977. Moved to 20 CSR 11403.030, effective Aug. 28, 2006.

*Original authority: 364.060, RSMo 1963, amended 1993, 1995.

20 CSR 1140-3.040 Extension Fees

PURPOSE: Extension fees are believed by the director of finance to be a fair and equitable approach to certain problems which can occur during the term of precomputed retail credit sales contracts. This rule is designed to provide a simple extension fee formula which is equitable for both the financial institutions and the debtor.

(1) Extensions on precomputed contracts made pursuant to the Retail Credit Sales Act shall be calculated according to the following formula:

$$\text{UNIT CHARGE (UC)} = \frac{\text{Total Finance Charge}}{\text{Sum of the Digits in the Original term that is } 1 + 2 + 3, \text{ etc.}}$$

Extension fee = UC times NUMBER OF FULL REMAINING INSTALLMENTS. Example: consider a twenty-four (24) month contract of \$1,925.25 with finance charges of \$474.75, monthly payments of \$100 and APR of 22.13%.

$$\text{UC} = \frac{474.75}{300} = 1.5825$$

If an extension is taken with twenty-two (22) installments remaining, the extension fee would be 22 times 1.5825 or \$34.81. Considerations within the act necessitate the following limitations on extensions:

(A) No extension fee shall be collected more than one (1) month prior to the due date of the earliest installment being deferred;

(B) No extension shall be collected for any partial payment, however, two dollars (\$2) or less shall not be considered a partial payment;

(C) A minimum extension fee of one dollar (\$1) will be allowed;

(D) Any principal payment collected on the same day as an extension shall be applied before calculating the extension fee; and

(E) In the event of prepayment in full of the note or contract, the extensions shall be counted as months and the rule of seventy eight's (78's) factor, based on this total, applied to all of the finance

charges contracted for plus the extension fees collected.

AUTHORITY: section 364.060, RSMo 1986.* This rule originally filed as 4 CSR 140-3.040. Original rule filed Feb. 13, 1980, effective June 12, 1980. Moved to 20 CSR 1140-3.040, effective Aug. 28, 2006.

*Original authority: 364.060, RSMo 1963, amended 1993, 1995.

20 CSR 1140-3.041 Retail Credit Sales - Insurance

PURPOSE: This rule is designed to promote consistent regulation of credit property insurance sold in connection with retail credit sales. It is felt that this regulation will promote competition.

(1) Credit property insurance may be sold, requisitioned, required or accepted in connection with any retail time transaction; provided, however, that such credit property insurance is subject to the following requirements, restrictions and qualifications:

(A) Minimum Policy Standards. Credit property insurance must include standard fire coverage, extended coverage endorsement and replacement cost provision endorsement; such insurance must calculate benefits from the date of loss;

(B) Written Evidence of Coverage. The consumer must be provided with a copy of the policy or certificate of insurance within thirty (30) days of the extension of credit;

(C) Personal Property Lists. The holder must retain a list of the personal property securing the extension of credit which list must be signed by the consumer and dated to correspond with the extension of credit;

(D) Consumer's Rights. The consumer shall have the following rights concerning any credit property insurance:

1. The consumer shall not be required or coerced to obtain insurance from any particular insurer or agent as a condition for obtaining credit;

2. The consumer may substitute coverage at any time and, upon such substitution, shall be entitled to a pro rata refund of the unearned premium; where such insurance was not initially required by the creditor, the consumer may cancel at any time without substituting and shall be entitled to a pro rata refund of any premium paid; and

3. Credit property insurance must be cancelled upon the satisfaction or termination of the underlying indebtedness; upon such cancellation, the consumer shall be entitled to a pro rata refund of the unearned premium;

(E) Insurance not to Exceed Contract Terms. Credit property insurance may not exceed in amount the total amount of the indebtedness nor exceed in duration the scheduled term of the underlying contract;

(F) Rates. Credit property insurance rates may not exceed the rates for such coverage prescribed or approved by the Division of Insurance; and

(G) Severability. If any provision of any section of this regulation or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or that section or application of the regulations which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

AUTHORITY: sections 364.060 and 408.280, RSMo 1986.* This rule originally filed as 4 CSR 140-3.041. Original rule filed June 14, 1978, effective Sept. 11, 1978. Amended: Filed April 12, 1979, effective July 12, 1979. Moved to 20 CSR 1140-3.041, effective Aug. 28, 2006.

*Original authority: 364.060, RSMo 1963, amended 1993, 1995.