STATE OF MISSOURI
CONSUMER
CREDIT LAWS

DIVISION OF FINANCE

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Division of Finance
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CHAPTER 67

POLITICAL SUBDIVISIONS, MISCELLANEOUS POWERS

PROPERTY ASSESSMENT CLEAN ENERGY ACT

Sec.

67.2800. Citation of law - definitions - projects subject to municipal ordinances and regulations. - 1. Sections 67.2800 to 67.2840 shall be known and may be cited as the "Property Assessment Clean Energy Act".

2. As used in sections 67.2800 to 67.2840, the following words and terms shall mean:

(1) **"Assessment contract"**, a contract entered into between a clean energy development board and a property owner under which the property owner agrees to pay an annual assessment for a period of up to twenty years not to exceed the weighted average useful life of the qualified improvements in exchange for financing of an energy efficiency improvement or a renewable energy improvement;

(2) **"Authority"**, the state environmental improvement and energy resources authority established under section 260.010;

(3) **"Bond"**, any bond, note, or similar instrument issued by or on behalf of a clean energy development board;

(4) **"Clean energy conduit financing"**, the financing of energy efficiency improvements or renewable energy improvements for a single parcel of property or a unified development consisting of multiple adjoining parcels of property under section 67.2825;

(5) **"Clean energy development board"**, a board formed by one or more municipalities under section 67.2810;

(6) **"Director"**, the director of the division of finance within the department of commerce and insurance;

(7) **"Division"**, the division of finance within the department of commerce and insurance;

(8) **"Energy efficiency improvement"**, any acquisition, installation, or modification on or of publicly or privately owned property designed to reduce the energy consumption of such property, including but not limited to:

(a) Insulation in walls, roofs, attics, floors, foundations, and heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective windows and doors, and other window and door improvements designed to reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning distribution system modifications and replacements;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building unless the increase in

illumination is necessary to conform to applicable state or local building codes;

(g) Energy recovery systems; and

(h) Daylighting systems;

(9) "Municipality", any county, city, or incorporated town or village of this state;

(10) **"Program administrator"**, an individual or entity selected by the clean energy development board to administer the PACE program, but this term does not include an employee of a county or municipal government assigned to a clean energy development board or a public employee employed by a clean energy development board who is paid from appropriated general tax revenues;

(11) **"Project"**, any energy efficiency improvement or renewable energy improvement;

(12) **"Property assessed clean energy local finance fund"**, a fund that may be established by the authority for the purpose of making loans to clean energy development boards to establish and maintain property assessed clean energy programs;

(13) **"Property assessed clean energy program"** or **"PACE program"**, a program established by a clean energy development board to finance energy efficiency improvements or renewable energy improvements under section 67.2820;

(14) **"Renewable energy improvement"**, any acquisition and installation of a fixture, product, system, device, or combination thereof on publicly or privately owned property that produces energy from renewable resources, including, but not limited to photovoltaic systems, solar thermal systems, wind systems, biomass systems, or geothermal systems.

3. All projects undertaken under sections 67.2800 to 67.2840 are subject to the applicable municipality's ordinances and regulations, including but not limited to those ordinances and regulations concerning zoning, subdivision, building, fire safety, and historic or architectural review.

(L. 2010 H.B. 1692, et al., A.L. 2021 H.B. 697)

67.2805. Rulemaking authority. - 1. The authority may, as needed, promulgate administrative rules and regulations relating to the following:

(1) Guidelines and specifications for administering the property assessed clean energy local finance fund; and

(2) Any clarification to the definitions of energy efficiency improvement and renewable energy improvement as the authority may determine is necessary or advisable.

2. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be invalid and void.

(L. 2010 H.B. 1692, et al.)

67.2810. Clean energy development boards may be formed, members, powers of board - annual report - limitation on certain legal actions. - 1. One or more municipalities may form clean energy development boards for the purpose of exercising the powers described in sections 67.2800 to 67.2840. Each clean energy development board shall consist of not less than three members, as set forth in the ordinance or order establishing the clean energy development board. Members shall serve terms as set forth in the ordinance or order establishing the clean energy development board and shall be appointed:

(1) If only one municipality is participating in the clean energy development board, by the chief elected officer of the municipality with the consent of the governing body of the municipality; or

(2) If more than one municipality is participating, in a manner agreed to by all participating municipalities.

2. A clean energy development board shall be a political subdivision of the state and shall have all powers necessary and convenient to carry out and effectuate the provisions of sections 67.2800 to 67.2840, including but not limited to the following:

(1) To adopt, amend, and repeal bylaws, which are not inconsistent with sections 67.2800 to 67.2840;

(2) To adopt an official seal;

(3) To sue and be sued;

(4) To make and enter into contracts and other instruments with public and private entities;

(5) To accept grants, guarantees, and donations of property, labor, services, and other things of value from any public or private source;

(6) To employ or contract for such managerial, legal, technical, clerical, accounting, or other assistance it deems advisable;

(7) To levy and collect special assessments under an assessment contract with a property owner and to record such special assessments as a lien on the property;

(8) To borrow money from any public or private source and issue bonds and provide security for the repayment of the same;

(9) To finance a project under an assessment contract;

(10) To collect reasonable fees and charges in connection with making and servicing assessment contracts and in connection with any technical, consultative, or project assistance services offered;

(11) To invest any funds not required for immediate disbursement in obligations of the state of Missouri or of the United States or any agency or instrumentality thereof, or in bank certificates of deposit; provided, however, the limitations on investments provided in this subdivision shall not apply to proceeds acquired from the sale of bonds which are held by a corporate trustee; and

(12) To take whatever actions necessary to participate in and administer a clean energy conduit financing or a property assessed clean energy program.

3. No later than July first of each year, the clean energy development board shall file with each municipality that participated in the formation of the clean energy development board and with the director of the department of natural resources an annual report for the preceding calendar year that includes:

(1) A brief description of each project financed by the clean energy development board during the preceding calendar year, which shall include the physical address of the property, the name or names of the property owner, an itemized list of the costs of the project, and the name of any contractors used to complete the project;

(2) The amount of assessments due and the amount collected during the preceding calendar year;

(3) The amount of clean energy development board administrative costs incurred during the preceding calendar year;

(4) The estimated cumulative energy savings resulting from all energy efficiency improvements financed during the preceding calendar year; and

(5) The estimated cumulative energy produced by all renewable energy improvements financed during the preceding calendar year.

4. No lawsuit to set aside the formation of a clean energy development board or to otherwise question the proceedings related thereto shall be brought after the expiration of sixty days from the effective date of the ordinance or order creating the clean energy development board. No lawsuit to set aside the approval of a project, an assessment contract, or a special assessment levied by a clean energy development board, or to otherwise question the proceedings related thereto shall be brought after the expiration of sixty days from the date that the assessment contract is executed.

(L. 2010 H.B. 1692, et al., A.L. 2021 H.B. 697)

67.2815. Assessment contract or levy of special assessment, requirements - maximum assessment - assessment to be a lien, when - right of first refusal, when - applicability for PACE program projects. - 1. A clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project without making a finding that there are sufficient resources to complete the project and that the estimated economic benefit expected from the project during the financing period is equal to or greater than the cost of the project.

2. An assessment contract shall be executed by the clean energy development board and the benefitted property owner or property owners and shall provide:

(1) A description of the project, including the estimated cost of the project and details on how the project will either reduce energy consumption or create energy from renewable sources;

(2) A mechanism for:

(a) Verifying the final costs of the project upon its completion; and

(b) Ensuring that any amounts advanced or otherwise paid by the clean energy development board toward costs of the project will not exceed the final cost of the project;

(3) An acknowledgment by the property owner that the property owner has received or will receive a special benefit by financing a project through the clean energy development board that equals or exceeds the total assessments due under the assessment contract;

(4) An agreement by the property owner to pay annual special assessments for a period not to exceed twenty years, as specified in the assessment contract;

(5) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual special assessments, are a covenant that shall run with the land and be obligations upon future owners of such property; and

(6) An acknowledgment that no subdivision of property subject to the assessment contract shall be valid unless the assessment contract or an amendment thereof divides the total annual special assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

3. The total special assessments levied against a property under an assessment contract shall not exceed the sum of the cost of the project, including any required energy audits and inspections, or portion thereof financed through the participation in a property assessed clean energy program or clean energy conduit financing, including the costs of any audits or inspections required by the clean energy development board, plus such administration fees, interest, and other financing costs reasonably required by the clean energy development board.

4. The clean energy development board shall provide a copy of each signed assessment contract to the local assessor and collector for the county, or city not within a county, and shall cause a copy of such assessment contract to be recorded in the real estate records of the recorder of deeds for the county, or city not within a county.

5. Special assessments agreed to under an assessment contract shall be a lien on the property against which it is assessed on behalf of the applicable clean energy development board from the date that each annual assessment under the assessment contract becomes due. Such special assessments shall be collected by the collector for the county, or city not within a county, in the same manner and with the same priority as ad valorem real property taxes, subject to the provisions of subsection 8* of this section. Once collected, the collector for the county, or city not within a county, shall pay over such special assessment revenues to the clean energy development board in the same manner in which revenues from ad valorem real property taxes are paid to other taxing districts. Such special assessments shall be collected as provided in this subsection from all subsequent property owners, including the state and all political subdivisions thereof, for the term of the assessment contract.

6. Any clean energy development board that contracts for outside administrative services to provide financing origination for a project shall offer the right of first refusal to enter into such a contract to a federally insured depository institution with a physical presence in Missouri upon the same terms and conditions as would otherwise be approved by the clean energy development board. Such right of first refusal shall not be applicable to the origination of any transaction that involves the issuance of bonds by the clean energy development board.

7. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall apply only to PACE programs for projects to improve residential properties of four or fewer units. Notwithstanding any provision of law to the contrary, any clean energy development board formed to improve commercial properties, properties owned by nonprofit or not-for-profit entities, governmental properties, or nonresidential properties in excess of four residential units shall be exempt from the provisions of sections 67.2816, 67.2817, 67.2818, and 67.2819, nor shall such sections apply to the commercial PACE programs and commercial PACE assessment contracts of any clean energy development board engaged in both commercial and residential property programs. Notwithstanding any provision of law to the contrary, any clean energy development board that ceases to finance new projects to improve residential properties of four or fewer units before January 1, 2022, shall be exempt from the provisions of sections 67.2816, 67.2817, 67.2818, and 67.2819.

(L. 2010 H.B. 1692, et al., A.L. 2021 H.B. 697)

*Subsection 8 does not exist.

67.2816. PACE program or district creation, joining, or withdrawal - notice to director - boards subject to examination for compliance, procedure - liability. - 1. Municipalities that have created or joined a residential PACE program or district shall inform the director by submitting a copy of the enabling ordinance to the division. Any municipality that withdraws from a residential PACE program or district shall inform the director by submitting a copy of the enabling ordinance for the withdrawal to the division.

2. Clean energy development boards offering residential property programs in the state of Missouri and their program administrator shall be subject to examination by the division for compliance with the provisions of sections 67.2800 to 67.2840 related to the administration of programs for residential properties.

3. The division shall conduct an examination of each clean energy development board at least once every twenty-four months. The functions, powers, and duties of the director shall include the authority to adopt, promulgate, amend, and repeal rules necessary and proper for the administration of the director's duties under sections 67.2800 to 67.2840, subject to the requirements of sections 361.105 and 536.024.

4. The division shall provide each completed examination of a clean energy development board to the municipality that has joined a residential PACE program operated by such board or district in which such board operates.

5. The clean energy development board and its program administrator or other agents shall be jointly and severally responsible for paying the actual costs of examinations, not to exceed five thousand dollars, which the director shall assess upon the completion of an examination and be credited to the division of finance fund established under section 361.170 and subject to the provisions thereof. The limitation on the division's costs of examination shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce.
(L. 2021 H.B. 697)

67.2817. Assessment contracts - approval criteria - insurance coverage required, when - notification by board prior to execution, when - website to be maintained. - 1. Notwithstanding any other contractual agreement to the contrary, each assessment contract shall be reviewed, approved, and executed by the clean energy development board and these duties shall not be delegated. Any attempted delegations of these duties shall be void.

2. An assessment contract shall not be approved, executed, submitted, or otherwise presented for recording unless a clean energy development board verifies that the following criteria are satisfied:

(1) The PACE assessments are assessed in equal annual installments;

(2) The PACE assessment may be paid in full at any time without prepayment penalty. The pay-off letter shall specify the amount of any fee or charge by a lender or loan service agent to obtain the total balance due. The release of the assessment shall be recorded within thirty days of the receipt of the amounts identified in the pay-off letter;

(3) The assessment contract shall disclose applicable penalties, interest penalties, or late fees under the contract and describe generally the interest and penalties imposed under chapter 140 relating to the collection of delinquent property taxes;

(4) The clean energy development board shall provide a separate statement to the owner of the residential property of the penalties or late fees authorized under the assessment contract and of the penalties and interest penalties under chapter 140 for the applicable tax collector as of the date of the assessment contract;

(5) The clean energy development board has confirmed that the property owner is current on property taxes for the project property;

(6) The property that shall be subject to the assessment contract has no recorded and outstanding involuntary liens in excess of one thousand dollars;

(7) The property owner shall not currently be a party to any bankruptcy proceeding where any existing lien holder of the property is named as a creditor;

(8) The term of the assessment contract shall not exceed the weighted average useful life of the qualified improvements to which the greatest portion of funds disbursed under the assessment contract is attributable, not to exceed twenty years. The clean energy development board shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations;

(9) The property owner is current on all mortgage debt on the subject property and has no more than one late payment during the twelve months immediately preceding the application date on any mortgage debt; and

(10) The clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project without making a finding that there are sufficient resources to complete the project and that the estimated economic benefit expected from the project during the financing period is equal to or greater than the cost of the project.

3. Any assessment contract for a project that, combined with any existing and outstanding indebtedness secured by the benefitted property, results in a loan-to-value ratio between eighty percent and ninety-seven percent of the true value in money, as determined by the assessor pursuant to chapter 137, plus ten percent of such amount, of the benefitted property prior to the project as determined by reference to the assessment records for tax purposes for the most recent completed assessment by the county, or city not within a county, shall include provision of an insurance policy providing coverage for any remaining cost of fulfilling the assessment contract, including any accumulated interest, in the event the property is foreclosed upon, if such product exists. Such insurance policy shall run

with the land in the same manner as the other obligations set forth in the assessment contract.

4. The property owner executing the PACE assessment contract shall have a three-day right to cancel the qualifying improvements proposed for financing under the PACE assessment contract. The three-day right to cancel shall expire at midnight of the third business day after a property owner signs the assessment contract. The clean energy development board shall be required to provide a printed form that is presented to the property owner no later than the time of signing of the assessment contract detailing the property owner's right to cancel. An electronic form may be provided if the owner consents electronically to receiving an electronic form.

5. Prior to the execution of an assessment contract, the clean energy development board shall advise the property owner in writing that any delinquent assessment shall be a lien on the property subject to the assessment contract and that the obligations under the PACE assessment contract continue as an obligation against the improved property if the property owner sells or refinances the property and that a purchaser or lender may require that before the owner may sell or refinance the property that the owner may be required to pay the assessment contract in full.

6. Prior to the execution of an assessment contract, the clean energy development board shall advise the property owner in writing that if the property owner pays his or her property taxes and special assessments via a lender or loan servicer's escrow program, the special assessment will cause the owner's monthly escrow requirements to increase and increase the owner's total monthly payment to the lender or the loan servicer. The clean energy development board shall further advise the property owner that if the special assessment results in an escrow shortage that the owner will be required to pay the shortage in a lump-sum payment or catch up the shortage over twelve months.

7. The clean energy development board, within three days of entering an assessment contract, shall provide any holder of a first mortgage loan a copy of the assessment contract and a statement that includes a brief description of the project, the cost of the project, the annual assessment that will be levied, and the number of annual assessments. Transmittal shall be by United States mail to the holder of the first mortgage loan of record.

8. The clean energy development board shall maintain a public website with current information about the PACE program as the board deems appropriate to inform consumers regarding the PACE program. The website shall list approved contractors for the PACE program. The website shall disclose the process for property owners or their successors to request information about the assessment contract, the status of the assessment contract, and for all questions including contract information to obtain a payoff amount for the release of an assessment contract.

9. The clean energy development board, its agents, contractor, or other third party shall not make any representation as to the income tax deductibility of an assessment.

(L. 2021 H.B. 697)

67.2818. Federal law applicability - contracts not entered into, when - disclosure form, contents - board duties prior to execution of contract, verbal confirmation. - 1. Any requirements and consumer protections established by federal law and regulations, and any amendments thereto, applicable to property assessed clean energy financing, shall apply to residential assessment contracts made pursuant to sections 67.2800 to 67.2840. Additionally, the clean energy development board shall consider the financial ability of the property owner to repay the assessment contract.

2. The clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project if the cash price of the residential project is more than twenty percent of the true value in money, as determined by the assessor pursuant to chapter 137, plus ten percent of such amount.

3. The clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project if the PACE assessment contract combined with any existing and outstanding indebtedness secured by the property exceeds ninety-seven percent of the true value in money, as determined by the assessor pursuant to chapter 137, plus ten percent of such amount.

4. The clean energy development board shall provide a disclosure form to homeowners that shows the financing terms of the assessment contract including, but not limited to:

(1) The total amount funded and borrowed, including the cost of the installed improvements, the program fees, and capitalized interest, if any;

(2) The annual tax assessment, billing process, and payment due date;

(3) The annual payment amounts;

(4) The term of the assessment;

(5) The fixed rate of interest charged;

(6) The annual percentage rate;

(7) A payment schedule that fully amortizes the amount financed;

(8) The improvements to be installed;

(9) A statement that if the property owner sells or refinances the property that the owner may be required by a mortgage lender or a purchaser to pay off the assessment as a condition of refinancing or sale;

(10) A statement that no penalty shall be assessed or collected for prepayment of the assessment and the specific amount of any fee or charge by a lender or loan servicing agent to obtain the total balance due in a pay-off letter and the recording of a release of the assessment which shall be recorded within thirty days of the receipt of the amount identified in the pay-off letter;

(11) That the PACE annual assessment shall be collected along with property taxes and that any taxes and annual assessment not paid on or before December thirty-first shall result in a lien on the improved property for the unpaid taxes, unpaid annual assessment, interest, and penalties as provided by law;

(12) That if the owner pays property taxes and insurance through his or her mortgage payment and an escrow account, that the special assessment will cause the owner's monthly escrow requirements to increase and increase the owner's monthly payment to the lender or the loan servicer and that if the special assessment results in an escrow shortage that the owner shall be required to pay the shortage in a lump-sum payment or catch-up the shortage over twelve months;

(13) That failure to timely pay the annual assessment and taxes will result in a tax lien and penalties and fees being assessed and added to the annual assessment and taxes, and that if the delinquency is not paid, the property could be sold at a tax sale resulting in issuance of a tax certificate or collector's deed to a purchaser that could result in the property owner losing his or her home; and

(14) That the property owner should seek professional tax advice if he or she has questions regarding tax credits related to a PACE project or the tax matters presented by the assessment contract or financing agreement and payments thereunder.

5. The clean energy development board shall be required to present the disclosure form to a property owner for acknowledgment prior to the execution of an assessment contract.

6. Before a property owner executes an assessment contract, the clean energy development board shall do the following:

(1) Make a verbal confirmation that at least one owner of the property has a copy of the assessment contract documents with all the key terms completed, the financing estimate and disclosure form, and the right-to-cancel form with a written copy available upon request; and

(2) Make a verbal confirmation of the key terms of the assessment contract, in plain language, with the property owner, or to the verified authorized representative of the owner, and shall obtain acknowledgment from the property owner or representative to whom the verbal confirmation is given.

7. The verbal confirmation shall include, but is not limited to, all the following information:

(1) The property owner has the right to have other persons present, and an inquiry as to whether the property owner would like to exercise the right to include other individuals. This inquiry shall occur immediately after the determination of the preferred language of communication;

(2) The property owner is informed that he or she should review the assessment contract and financing estimate and disclosure form with all other owners of the property;

(3) The qualified improvement being installed is being financed by an assessment contract;

(4) The total estimated annual costs the property owner will have to pay under the assessment contract, including applicable fees;

(5) The total estimated average monthly amount of funds the property owner would have to save in order to pay the annual costs under the assessment contract, including applicable fees;

(6) The term of the assessment contract;

(7) That payments on the assessment contract shall be made through an additional annual assessment on the property and paid either directly to the county tax collector's office as part of the total annual secured property tax bill or through the property owner's mortgage escrow account, and that if the property owner pays his or her taxes through an escrow account, he or she should notify his or her mortgage lender to discuss adjusting his or her monthly mortgage payment or otherwise providing additional funds to avoid a shortage in the owner's mortgage escrow account;

(8) That the property shall be subject to a lien during the term of the assessment contract for any delinquent assessments;

(9) That before the owner may sell or refinance the property, a purchaser or lender may require the obligation under the assessment contract to be paid in full;

(10) That the clean energy development board, its agents contractor, or other third party does not provide tax advice, and that the property owner should seek professional tax advice if he or she has questions regarding tax credits related to the project or the tax matters presented by the PACE assessment or assessment contract; and

(11) The date the first payment shall be due.

(L. 2021 H.B. 697)

67.2819. Advertisement of availability of contracts, requirements - prohibited acts of board. - 1. The clean energy development board or its agents shall not permit contractors or other third parties to advertise the availability of residential assessment contracts that are administered by the board, or to solicit property owners on behalf of the board, unless both of the following requirements are met:

(1) The contractor maintains any permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains bond and insurance coverage in minimum amounts determined by the clean energy development board or higher amounts as required in the jurisdiction where the contractor is licensed or registered; and

(2) The clean energy development board or its agents obtain the contractor's written agreement that the contractor or third party shall act in accordance with chapter 407 and other applicable advertising and marketing laws and regulations.

2. The clean energy development board or its agents shall not provide any direct or indirect cash payment or other thing of material value to a contractor or third party in excess of the actual price charged by that contractor or third party to the property owner for one or more qualified improvements financed by an assessment contract.

3. The clean energy development board or its agents shall not provide to a contractor engaged in soliciting financing agreements on behalf of the clean energy development board or its agents any information that discloses the maximum amount of funds for which a property owner may be eligible for qualifying improvements or the amount of equity in a property.

4. The clean energy development board or its agents shall not reimburse a contractor or third party for expenses for advertising and marketing campaigns that solely benefit the contractor.

5. The clean energy development board or its agents may reimburse a contractor's bona fide and reasonable training expenses related to PACE financing, provided that:

(1) The training expenses are actually incurred by the contractor; and

(2) The reimbursement is paid directly to the contractor, and is not paid to its salespersons or agents.

6. The clean energy development board or its agents shall not provide any direct cash payment or other thing of value to a property owner explicitly conditioned upon the property owner entering into an assessment contract. Notwithstanding the provisions of this subsection to the contrary, programs or promotions that offer reduced fees or interest rates to property owners are not a direct cash payment or other thing of value, provided that the reduced fee or interest rate is reflected in the assessment contract and in no circumstance provided to the property owner as cash consideration. A contractor shall not provide a different price for a project financed under this section than the contractor would provide if paid in cash by the property owner.

(L. 2021 H.B. 697)

67.2820. Program authorized, requirements - application process - audit may be required. - 1. Any clean energy development board may establish a property assessed clean energy program to finance energy efficiency improvements or renewable energy improvements. A property assessed clean energy program shall consist of a program whereby a property owner may apply to a clean energy development board to finance the costs of a project through annual special assessments levied under an assessment contract.

2. A clean energy development board may establish application requirements and criteria for project financing approval as it deems necessary to effectively administer such program and ration available funding among projects, including but not limited to requiring projects to meet certain energy efficiency standards.

3. Clean energy development boards shall ensure that any property owner approved by the board to participate in a property assessed clean energy program or clean energy conduit financing under sections 67.2800 to 67.2835 shall have good creditworthiness or shall otherwise be considered a low risk for failure to meet the obligations of the program or conduit financing.

4. A clean energy development board may require an initial energy audit conducted by a qualified home energy auditor as defined in subdivision (4) of subsection 1 of section 640.153

as a prerequisite to project financing through a property assessed clean energy program as well as inspections to verify project completion.
(L. 2010 H.B. 1692, et al.)

67.2825. Alternative financing method. - 1. In lieu of financing a project through a property assessed clean energy program, a clean energy development board may seek to finance any number of projects to be installed within a single parcel of property or within a unified development consisting of multiple adjoining parcels of property by participating in a clean energy conduit financing.

2. A clean energy conduit financing shall consist of the issuance of bonds under section 67.2830 payable from the special assessment revenues collected under an assessment contract with the property owner participating in the clean energy conduit financing and any other revenues pledged thereto.
(L. 2010 H.B. 1692, et al.)

67.2830. Issuance of bonds. - 1. A clean energy development board may issue bonds payable from special assessment revenues generated by assessment contracts and any other revenues pledged thereto. The bonds shall be authorized by resolution of the clean energy development board, shall bear such date or dates, and shall mature at such time or times as the resolution shall specify, provided that the term of any bonds issued for a clean energy conduit financing shall not exceed twenty years. The bonds shall be in such denomination, bear interest at such rate, be in such form, be issued in such manner, be payable in such place or places, and be subject to redemption as such resolution may provide. Notwithstanding any provision to the contrary under this section, issuance of the bonds shall conform to the requirements of subsection 1 of section 108.170.

2. Any bonds issued under this section shall not constitute an indebtedness of the state or any municipality. Neither the state nor any municipality shall be liable on such bonds, and the form of such bonds shall contain a statement to such effect.
(L. 2010 H.B. 1692, et al.)

67.2835. Allocation of state's residual share of certain bond limitation. - The director of the department of economic development is authorized to allocate the state's residual share, or any portion thereof, of the national qualified energy conservation bond limitation under Section 54D of the Internal Revenue Code of 1986, as amended, for any purposes described therein to the authority, any clean energy development board, the state, any political subdivision, instrumentality, or other body corporate and politic.
(L. 2010 H.B. 1692, et al.)

67.2840. Effective dates. - 1. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and apply to the residential PACE programs of clean energy development boards and participating municipalities after January 1, 2022.

2. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and apply to residential PACE assessment contracts entered into after January 1, 2022.
(L. 2021 H.B. 697)

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CHAPTER 301

REGISTRATION AND LICENSING OF MOTOR VEHICLES

301.558. Dealer may fill in blanks on standardized forms, when - fee authorized, fund created - preliminary worksheet on computation of sale price, requirements. - 1. A motor vehicle dealer, boat dealer, or powersport dealer may fill in the blanks on standardized forms in connection with the sale or lease of a new or used motor vehicle, vessel, or vessel trailer if the motor vehicle dealer, boat dealer, or powersport dealer does not charge for the services of filling in the blanks or otherwise charge for preparing documents.

2. A motor vehicle dealer, boat dealer, or powersport dealer may charge an administrative fee in connection with the sale or lease of a new or used motor vehicle, vessel, or vessel trailer for the storage of documents or any other administrative or clerical services not prohibited by this section. A portion of the administrative fee may result in profit to the motor vehicle dealer, boat dealer, or powersport dealer.

*3. (1) Ten percent of any fee authorized under this section and charged by motor vehicle dealers shall be remitted to the motor vehicle administration technology fund established in this subsection, for the development of the system specified in this subsection. Following the development of the system specified in this subsection, the director of the department of revenue shall notify motor vehicle dealers and implement the system, and the percentage of any fee authorized under this section required to be remitted to the fund shall be reduced to one percent, which shall be used for maintenance of the system. This subsection shall expire on January 1, 2037.

(2) There is hereby created in the state treasury the “Motor Vehicle Administration Technology Fund”, which shall consist of money collected as specified in this subsection. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and money in the fund shall be used solely by the department of revenue for the purpose of development and maintenance of a modernized, integrated system for the titling of vehicles, issuance and renewal of vehicle registrations, issuance and renewal of driver's licenses and identification cards, and perfection and release of liens and encumbrances on vehicles.

(3) Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

(4) The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

4. No motor vehicle dealer, boat dealer, or powersport dealer that sells or leases new or used motor vehicles, vessels, or vessel trailers and imposes an administrative fee of five hundred dollars or less in connection with the sale or lease of a new or used vehicle, vessel, or vessel trailer for the storage of documents or any other administrative or clerical services shall be deemed to be engaging in the unauthorized practice of law. The maximum administrative fee permitted under this subsection shall be increased annually by an amount equal to the percentage change in the annual average of the Consumer Price Index for All Urban Consumers or its successor index, as reported by the federal Bureau of Labor Statistics or its successor agency, or by zero, whichever is greater. The director of the department of revenue shall annually furnish the maximum administrative fee determined under this section to the secretary of state, who shall publish such value in the Missouri Register as soon as practicable after January fourteenth of each year.

5. If an administrative fee is charged under this section, the same administrative fee shall be charged to all retail customers unless the fee is limited by the dealer's franchise agreement to certain classes of customers. The fee shall be disclosed on the retail buyer's order form as a separate itemized charge.

6. A preliminary worksheet on which a sale price is computed and that is shown to the purchaser, a retail buyer's order form from the purchaser, or a retail installment contract shall include, in reasonable proximity to the place on the document where the administrative fee authorized by this section is disclosed, the amount of the administrative fee and the following notice in type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"AN ADMINISTRATIVE FEE IS NOT AN OFFICIAL FEE AND IS NOT REQUIRED BY LAW BUT MAY BE CHARGED BY A DEALER. THIS ADMINISTRATIVE FEE MAY RESULT IN A PROFIT TO DEALER. NO PORTION OF THIS ADMINISTRATIVE FEE IS FOR THE DRAFTING, PREPARATION, OR COMPLETION OF DOCUMENTS OR THE PROVIDING OF LEGAL ADVICE. THIS NOTICE IS REQUIRED BY LAW.".

7. The general assembly believes that an administrative fee charged in compliance with this section is not the unauthorized practice of law or the unauthorized business of law so long as the activity or service for which the fee is charged is in compliance with the provisions of this section and does not result in the waiver of any rights or remedies. Recognizing, however, that the judiciary is the sole arbitrator of what constitutes the practice of law, in the event that a court determines that an administrative fee charged in compliance with this section, and that does not waive any rights or remedies of the buyer, is the unauthorized practice of law or the unauthorized business of law, then no person who paid that administrative fee may recover said fee or treble damages, as permitted under section 484.020, and no person who charged that fee shall be guilty of a misdemeanor, as provided under section 484.020.

(L. 2009 S.B. 355, A.L. 2021 S.B. 176)

301.620. Duties of parties upon creation of lien or encumbrance, violation, penalty. - If an owner creates a lien or encumbrance on a motor vehicle or trailer:

(1) The owner shall immediately execute the application, in the space provided therefor on the certificate of ownership or on a separate form the director of revenue prescribes, to name the lienholder on the certificate, showing the name and address of the lienholder and the date of the lienholder's security agreement, and cause the certificate, application and the required fee to be delivered to the director of revenue;

(2) The lienholder or an authorized agent licensed pursuant to sections 301.112 to 301.119 shall deliver to the director of revenue a notice of lien as prescribed by the director accompanied by all other necessary documentation to perfect a lien as provided in section 301.600;

(3) To perfect a lien for a subordinate lienholder when a transfer of ownership occurs, the subordinate lienholder shall either mail or deliver, or cause to be mailed or delivered, a completed notice of lien to the department of revenue, accompanied by authorization from the first lienholder. The owner shall ensure the subordinate lienholder is recorded on the application for title at the time the application is made to the department of revenue. To perfect a lien for a subordinate lienholder when there is no transfer of ownership, the owner or lienholder in possession of the certificate shall either mail or deliver, or cause to be mailed or delivered, the owner's application for title, certificate, notice of lien, authorization from the first lienholder and title fee to the department of revenue. The delivery of the certificate and executing a notice of authorization to add a subordinate lien does not affect the rights of the first lienholder under the security agreement;

(4) Upon receipt of the documents and fee required in subdivision (3) of this section, the director of revenue shall issue a new certificate of ownership containing the name and address of the new lienholder, and shall mail the certificate as prescribed in section 301.610 or if a lienholder who has elected for the director of revenue to retain possession of an electronic certificate of ownership the lienholder shall either mail or deliver to the director a notice of authorization for the director to add a subordinate lienholder to the existing certificate. Upon receipt of such authorization, a notice of lien and required documents and title fee, if applicable, from a subordinate lienholder, the director shall add the subordinate lienholder to the certificate of ownership being electronically retained by the director and provide confirmation of the addition to both lienholders;

(5) Failure of the owner to name the lienholder in the application for title, as provided in this section, is a class A misdemeanor.

(L. 1965 p. 474 § 3, A.L. 1990 H.B. 1279, A.L. 1992 H.B. 884, A.L. 1999 H.B. 795, A.L. 2002 H.B. 2008 merged with S.B. 895)

CHAPTER 361

DIVISION OF FINANCE AND POWERS OF DIRECTOR OF FINANCE

SALE OF CHECKS - MONEY ORDERS

Sec.

361.700. Sale of checks law, how cited - definitions. - 1. Sections 361.700 to 361.727 shall be known and may be cited as the "Sale of Checks Law".

2. For the purposes of sections 361.700 to 361.727, the following terms mean:

(1) **"Check"**, any instrument for the transmission or payment of money and shall also include any electronic means of transmitting or paying money;

(2) **"Director"**, the director of the division of finance;

(3) **"Licensee"**, any person duly licensed by the director pursuant to sections 361.700 to 361.727;

(4) **"Person"**, any individual, partnership, association, trust or corporation.

(L. 1984 H.B. 1374 §§ 1, 2, A.L. 2002 SB 895)

361.705. License required to issue checks for consideration, exceptions - violations, penalty. - 1. No person shall issue checks in this state for a consideration without first obtaining a license from the director; provided, however, that sections 361.700 to 361.727 shall not apply to the receipt of money by an incorporated telegraph company at any office or agency of such company for immediate transmission by telegraph nor to any bank, trust company, savings and loan association, credit union, or agency of the United States government.

2. Any person who violates any of the provisions of sections 361.700 to 361.727 or attempts to sell or issue checks without having first obtained a license from the director shall be deemed guilty of a class A misdemeanor.

(L. 1984 H.B. 1374 §§ 3, 14)

361.707. Application for license, content - investigation fee, applied to license fee, when. - 1. Each application for a license pursuant to sections 361.700 to 361.727 shall be in writing and under oath to the director in such form as he may prescribe. The application shall state the full name and business address of:

(1) The proprietor, if the applicant is an individual;

(2) Every member, if the applicant is a partnership or association;

(3) The corporation and each officer and director thereof, if the applicant is a corporation.

2. Each application for a license shall be accompanied by an investigation fee of three hundred dollars. If the license is granted the investigation fee shall be applied to the license fee for the first year. No investigation fee shall be refunded.

(L. 1984 H.B. 1374 §§ 4, 5, A.L. 2015 H.B. 587 merged with S.B. 345)

361.711. Surety bond or irrevocable letter of credit required, costs, amount, special examinations. Each application for a license shall be accompanied by a corporate surety bond in the principal sum of one hundred thousand

dollars. The bond shall be in form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant with respect to the receipt, transmission, and payment of money in connection with the sale or issuance of checks and also to pay the costs incurred by the division to remedy any breach of the obligations of the applicant subject to the bond or to pay examination costs of the division owed and not paid by the applicant. Upon license renewal, the required amount of bond shall be as follows:

(1) For all licensees selling payment instruments or stored value cards, five times the high outstanding balance from the previous year with a minimum of one hundred thousand dollars and a maximum of one million dollars;

(2) For all licensees receiving money for transmission, five times the greatest amount transmitted in a single day during the previous year with a minimum of one hundred thousand dollars and a maximum of one million dollars.

If in the opinion of the director the bond shall at any time appear to be inadequate, insecure, exhausted, or otherwise doubtful, additional bond in form and with surety satisfactory to the director shall be filed within fifteen days after notice of the requirement is given to the licensee by the director. An applicant or licensee may, in lieu of filing any bond required under this section, provide the director with an irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any state or federal financial institution. Whenever in the director's judgment it is necessary or expedient, the director may perform a special examination of any person licensed under sections 361.700 to 361.727 with all authority under section 361.160 as though the licensee were a bank. The cost of such examination shall be paid by the licensee.
(L. 1984 H.B. 1374 § 6, A.L. 1989 H.B. 386, A.L. 2006 S.B. 892)

361.715. License issued upon investigation, when - fee - charge for applications to amend and reissue. 1. Upon the filing of the application, the filing of a certified audit, the payment of the investigation fee and the approval by the director of the necessary bond, the director shall cause, investigate, and determine whether the character, responsibility, and general fitness of the principals of the applicant or any affiliates are such as to command confidence and warrant belief that the business of the applicant will be conducted honestly and efficiently and that the applicant is in compliance with all other applicable state and federal laws. If satisfied, the director shall issue to the applicant a license pursuant to the provisions of sections 361.700 to 361.727. In processing a renewal license, the director shall require the same information and follow the same procedures described in this subsection.

2. Each licensee shall pay to the director before the issuance of the license, and annually thereafter on or before April fifteenth of each year, a license fee of three hundred dollars.

3. The director may assess a reasonable charge, not to exceed three hundred dollars, for any application to amend and reissue an existing license.
(L. 1984 H.B. 1374 §§ 7, 8, A.L. 2006 S.B. 892, A.L. 2015 H.B. 587 merged with S.B. 345)

361.718. Reserve required - director may demand proof, when. - Every licensee shall at all times have on demand deposit in a federally insured depository institution or in the form of cash on hand or in the hands of his agents or in readily marketable securities an amount equal to all outstanding unpaid checks sold by him or his agents in Missouri, in addition to the amount of his bond. Upon demand by the director, licensees must immediately provide proof of such funds or securities. The director may make such demand as often as reasonably necessary and shall make such demand to each licensee, without prior notice, at least twice each license year.
(L. 1984 H.B. 1374 § 9)

361.720. Licensee may conduct business through unlicensed agents and employees. - Each licensee may conduct business at one or more locations within this state and by means of employees, agents, subagents or representatives as such licensee may designate. No license under sections 361.700 to 361.727 shall be required of any such employee, agent, subagent or representative who sells checks in behalf of a licensee. Each such agent, subagent or representative shall upon demand transfer and deliver to the licensee the proceeds of the sale of licensee's checks less the fees, if any, due such agent, subagent or representative.
(L. 1984 H.B. 1374 § 10)

361.723. Annual report filed with director, content. - Each licensee shall file with the director annually on or before April fifteenth of each year a statement listing the locations of the offices of the licensee and the names and locations of the agents or subagents authorized by the licensee to engage in the sale of checks of which the licensee is the issuer.
(L. 1984 H.B. 1374 § 11)

361.725. Revocation or suspension of license - grounds - procedure. - The director may at any time suspend or revoke a license, for any reason he might refuse to grant a license, for failure to pay annual fee or for a violation of any provision of sections 361.700 to 361.727. No license shall be denied, revoked or suspended except on ten days' notice to the applicant or licensee. Upon receipt of such notice the applicant or licensee may, within five days of such receipt, make written demand for a hearing. The director shall thereafter hear and determine the matter in accordance with the provisions of chapter 536.
(L. 1984 H.B. 1374 § 12)

361.727. Rules - authority. - The director shall issue regulations necessary to carry out the intent and purposes of sections 361.700 to 361.727, pursuant to the provisions of section 361.105 and chapter 536.
(L. 1984 H.B. 1374 § 13, A.L. 1993 S.B. 52, A.L. 2021 S.B. 106)

361.729. Persons, firms and corporations not subject to administrative penalty for acts performed in reliance on written interpretations. - Any other provisions of the law to the contrary notwithstanding, any person, firm or corporation shall not be subject to any administrative proceeding or penalty for any acts or omissions done in reliance on a written interpretation of any sections of chapter 408, RSMo, by the division of finance, which is applicable to a specific set of facts originally proposed by the person, firm or corporation prior to committing such acts or omissions.
(L. 1992 S.B. 705 § 9)

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CHAPTER 364

RETAIL CREDIT FINANCING INSTITUTIONS

Sec.

PREMIUM FINANCE COMPANIES

CROSS REFERENCES

All license, permit and certificate applications shall contain the Social Security number of the applicant, 324.024

Disclosure of nonpublic information by financial institutions prohibited, authority for rules, 362.422

Uniform electronic transactions act, 432.200 to 432.295

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 five 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)

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)

PREMIUM FINANCE COMPANIES

364.100. Definitions. - As used in sections 364.100 to 364.160, the following terms shall mean:

(1) **"Director"**, the director of the division of finance of the state of Missouri;

(2) **"Person"**, an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company, or any other group of individuals, however organized;

(3) **"Premium finance agreement"**, an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced to an insurer or to an insurance agent or broker in payment of premiums of an insurance contract together with interest or discount and a service charge, as authorized and limited by sections 364.100 to 364.160;

(4) **"Premium finance company"**, a person engaged in the business of entering into premium finance agreements or acquiring premium finance agreements from other premium finance companies.

(L. 1984 S.B. 636 § 1)

364.105. Registration required - fee - forms. - 1. No person shall engage in the business of a premium finance company in this state without first registering as a premium finance company with the director.

2. The annual registration fee shall be five hundred dollars payable to the director as of the first day of July of each year. 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.

3. Registration shall be made on forms prepared by the director and shall contain the following information:

(1) Name, business address and telephone number of the premium finance company;

(2) Name and business address of corporate officers and directors or principals or partners;

(3) A sworn statement by an appropriate officer, principal or partner of the premium finance company that:

(a) The premium finance company is financially capable to engage in the business of insurance premium financing; and

(b) If a corporation, that the corporation is authorized to transact business in this state;

(4) If any material change occurs in the information contained in the registration form, a revised statement shall be submitted to the director accompanied by an additional fee of three hundred dollars.

(L. 1984 S.B. 686 § 2, A.L. 1986 H.B. 1195, A.L. 2003 S.B. 346, A.L. 2015 H.B. 587 merged with S.B. 345)

364.110. Records to be maintained by company. - 1. A premium finance company shall maintain records of its premium finance transactions.

2. A premium finance company shall preserve its records of premium finance transactions, including cards used in a card system, if any, for at least two years after making the final entry with respect to any premium finance agreement. The preservation of records in photographic, microfilm or microfiche form constitutes compliance with this section.

(L. 1984 S.B. 686 § 3)

364.115. Premium finance agreement, requirements, contents. - A premium finance agreement shall:

(1) Be dated and signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type;

(2) Contain the name and place of business of the insurance agent or broker negotiating the related insurance contract, the name and residence or place of business of the insured, the name and place of business of the premium finance company to which payments are to be made, a brief description of the insurance contracts involved and the amount of premium; and

(3) Set forth the following items, where applicable:

(a) The total amount of the premium;

(b) The amount of the down payment;

(c) The principal balance, meaning the difference between the amounts stated under paragraphs (a) and (b) of this subdivision;

(d) The amount of the interest or discount;

(e) The balance payable by the insured, meaning the sum of amounts stated under paragraphs (c) and (d) of this subdivision; and

(f) The number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(L. 1984 S.B. 686 § 4)

364.120. Interest or discount, amount allowed, computation - prepayment of obligation - refund credit, calculation. - 1. A premium finance company shall not charge, contract for, receive, or collect any interest or discount charge other than as permitted by sections 364.100 to 364.160.

2. The interest or discount is to be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance contract, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

3. The interest or discount shall be a maximum of fifteen dollars per one hundred dollars per year, which shall be computed as a fifteen percent add-on interest rate, plus an additional service charge of ten dollars per premium finance agreement which need not be refunded on cancellation or prepayment; except that, if the insurance premiums being financed are for other than personal, family or household purposes, the parties to the premium finance agreement may agree to any rate of interest which shall be stated in the premium finance agreement. The interest or discount permitted by this subsection anticipates timely repayment in consecutive monthly installments equal in amount for a period of one year. For repayment in greater or lesser periods or in unequal, irregular, or other than monthly installments, the interest or discount may be computed at an equivalent effective rate having due regard for the timely payments of installments.

4. Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time and shall receive a refund credit. The amount of the refund shall be calculated by the actuarial method of calculating refunds and no more interest shall be retained by the lender than is actually earned.

(L. 1984 S.B. 686 § 5, A.L. 1986 H.B. 1207, A.L. 2002 S.B. 895)

364.125. Other charges allowed. - 1. A premium finance agreement may provide for the payment by the insured of a delinquency charge of up to five percent of any installment which is in default for a period of five days or more. If the premium finance agreement is for personal, family or household purposes, the then maximum delinquency charge shall be fifteen dollars. If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge of fifteen dollars.

2. A premium finance agreement may provide for payment of collection costs and attorney's fees equal to twenty percent of the outstanding indebtedness if the premium finance agreement is referred for collection to a collection agency or attorney who are not salaried employees of the premium finance company.

3. None of the charges referred to in this section shall be considered, directly or indirectly, in determining whether a violation of the usury laws has occurred under a premium finance agreement.
(L. 1984 S.B. 686 § 6)

364.130. Cancellation of finance contract under power of attorney - requirements, procedure. - 1. When a premium finance agreement contains a power of attorney clause enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is done in accordance with this section.

2. Not less than ten days' written notice shall be mailed to the insured, at the last known address shown on the records of the premium finance company, of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten-day period.

3. After expiration of such ten-day period, the premium finance company may thereafter cancel such insurance contract or contracts by mailing to the insurer a notice of cancellation. The insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a copy of the notice of cancellation to the insured at the last known address shown on the records of the premium finance company.

4. All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.
(L. 1984 S.B. 686 § 7)

364.135. Return of unearned premiums on cancellation of financed contract - time allowed. - Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract directly to the premium finance company for the account of the insured or insureds as soon as reasonably possible, but in no event later than sixty days after the effective date of cancellation. In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured, provided that no such refund shall be required if it amounts to less than one dollar.
(L. 1984 S.B. 686 § 8)

364.140. Filing of agreement not required for validity against creditors. - No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, trustees in bankruptcy or any other insolvency proceedings under any law, or anyone having the status or power of the aforementioned or their successors or assigns.
(L. 1984 S.B. 686 § 9)

364.145. Revenue deposited to state general revenue fund. - All revenues collected by or paid to the director under the provisions of sections 364.100 to 364.160 shall be forwarded immediately to the director of revenue, who shall deposit them in the general revenue fund.
(L. 1984 S.B. 686 § 10)

364.150. Application of law. - The licensing provisions of sections 364.100 to 364.160 shall not apply to any insurance agent or insurance broker licensed to do business in this state. Nor shall the provisions of sections 364.100 to 364.160 apply to insurance premiums financed in connection with credit transactions.
(L. 1984 S.B. 686 § 11)

364.160. Violation of law - misdemeanor. - Any premium finance company willfully and knowingly violating the provisions of sections 364.100 to 364.160 shall be guilty of a class A misdemeanor.
(L. 1984 S.B. 686 § 13)

CHAPTER 365

MOTOR VEHICLE TIME SALES

Sec.

CROSS REFERENCES

All license, permit and certificate applications shall contain the Social Security number of the applicant, 324.024

Default procedures, sections 408.551 to 408.562 applicable, 408.551

365.010. Citation of law. - Sections 365.010 to 365.160 shall be known and may be cited as the "Missouri Motor Vehicle Time Sales Law".

(L. 1963 p. 466 § 1, A.L. 1999 S.B. 386)

365.020. Definitions. - Unless otherwise clearly indicated by the context, the following words and phrases have the meanings indicated:

(1) **"Cash sale price"**, the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if the sale had been a sale for cash or at a cash price instead of a retail installment transaction at a time sale price. The cash sale price may include any taxes, registration, certificate of title, license and other fees and charges for accessories and their installment and for delivery, servicing, repairing or improving the motor vehicle;

(2) **"Director"**, the office of the director of the division of finance;

(3) **"Holder"** of a retail installment contract, the retail seller of the motor vehicle under the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee;

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

(5) **"Motor vehicle"**, any new or used automobile, mobile 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, all-terrain vehicle, motorized bicycle, electric bicycle as defined in section 301.010, moped, motortricycle, truck, trailer, semitrailer, truck tractor, or bus primarily designed or used to transport persons or property on a public highway, road or street;

(6) **"Official fees"**, 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 installment transaction;

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

(8) **"Principal balance"**, the cash sale price of the motor vehicle which is the subject matter of the retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits, including any amounts paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien, or lease interest on property traded in and official fees, minus the amount of the buyer's down payment in money or goods. Notwithstanding any law to the contrary, any amount actually paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien or lease on property traded in which was included in a contract prior to August 28, 1999, is valid and legal;

(9) **"Retail buyer"** or **"buyer"**, a person who buys a motor vehicle from a retail seller in a retail installment transaction under a retail installment contract;

(10) **"Retail installment contract"** or **"contract"**, an agreement evidencing a retail installment transaction entered into in this state pursuant to which the title to or a lien upon the motor vehicle, which is the subject matter of the retail installment transaction is retained or taken by the seller from the buyer as security for the buyer's obligation. The term includes a chattel mortgage or a conditional sales contract;

(11) **"Retail installment transaction"**, a sale of a motor vehicle by a retail seller to a retail buyer on time under a retail installment contract for a time sale price payable in one or more deferred installments;

(12) **"Retail seller"** or **"seller"**, a person who sells a motor vehicle, not principally for resale, to a retail buyer under a retail installment contract;

(13) **"Sales finance company"**, a person engaged, in whole or in part, in the business of purchasing retail installment contracts 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, financing institution, or registrant pursuant to sections 367.100 to 367.200, if so engaged. The term shall not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated or successive purchases of retail installment contracts from the same seller;

(14) **"Time price differential"**, the amount, however denominated or expressed, as limited by section 365.120, in addition to the principal balance to be paid by the buyer for the privilege of purchasing the motor vehicle on time to be paid for by the buyer in one or more deferred installments;

(15) **"Time sale price"**, the total of the cash sale price of the motor vehicle 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 time price differential.

(L. 1963 p. 466 § 2, A.L. 1999 S.B. 386, A.L. 2000 S.B. 896, A.L. 2004 S.B. 1233, et al., A.L. 2010 S.B. 630, A.L. 2021 S.B. 176)

(1973) By regulating motor vehicle time sales of vehicles having a cash sale price of $7,500 or less the G.A. did not prohibit such sales having a cash sales price in excess of such amount. DePoortere v. Commercial Credit Corp. (A.), 500 S.W.2d 724.

365.030. Sales finance company, license required - exceptions - application - fee. - 1. No person shall engage in the business of a sales finance company in this state without a license as provided in this chapter; except, that no bank, trust company, savings and loan association, loan and investment company or registrant under the provisions of sections 367.100 to 367.200 authorized to do business in this state is required to obtain a license under this chapter but shall comply with all of the other provisions of this chapter.

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 such other pertinent information as the director may require.

3. The license fee for each calendar year or part thereof shall be the sum of five hundred dollars for each place of business of the licensee in this state. 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 there. In case the location is changed, the director shall either endorse the change of location on the license or mail the licensee a certificate to that effect, without charge.

5. Upon the filing of the application, and the payment of the fee, the director shall issue a license to the applicant to engage in the business of a sales finance company 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. 466 § 3, A.L. 1986 H.B. 1195, A.L. 2003 S.B. 346, A.L. 2015 H.B. 587 merged with S.B. 345)

365.040. 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 in the application for license;

(2) Willful failure to comply with any provision of this chapter relating to retail installment contracts;

(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 the retail buyer under this chapter.

2. If a licensee is a partnership, 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 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 the 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. 466 § 4)

365.050. Director may examine persons, inspect records - complaints of violations. - 1. The director, or his duly authorized representative, may make such investigation as he shall deem necessary and, to the extent necessary for this purpose, he may examine the licensee or any other person having personal knowledge of the matters under investigation, and shall have the power to compel the production of all relevant books, records, accounts and documents of licensees and other persons with respect to their retail installment transactions.

2. Any retail buyer having reason to believe that this chapter relating to his retail installment contract 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 licensee and other persons and of the retail seller involved, relating to the specific written complaint.

(L. 1963 p. 466 § 5)

365.060. Rules and regulations, procedure - subpoenas, enforced how. - 1. The director may adopt and promulgate such reasonable rules and regulations as shall be necessary to carry out the intent and purposes of this chapter. A copy of every rule or regulation shall be mailed to each licensee and to each bank, trust company, loan and investment company, financing institution, and registrant under sections 367.100 to 367.200, RSMo, postage prepaid, at least fifteen days in advance of its effective date, but the failure of a licensee or other person to receive a copy of the rules or regulations does not exempt him from the duty of compliance with rules and regulations lawfully promulgated hereunder. 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.

2. The director shall 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 may administer oaths and affirmations to any person whose testimony is required.

3. If any person refuses to obey any 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 refuses to obey the same, 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 may 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.

(L. 1963 p. 466 § 6, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

365.070. Retail installment contracts to be in writing - form, contents. - 1. Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall be completed as to all essential provisions prior to the signing of the contract by the buyer. In addition to the retail installment contract, the seller may require the buyer to execute and deliver a negotiable promissory note to evidence the indebtedness created by the retail installment transaction and the seller may require security for the payment of the indebtedness or the performance of any other condition of the transaction. Every note executed pursuant to a retail installment contract shall expressly state that it is subject to prepayment privilege required by law and the refund required by law in such cases. Any such note, if otherwise negotiable under the provisions of sections 400.3-101 to 400.3-805, RSMo, shall be negotiable. The retail installment contract may evidence the security.

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.**

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

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

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

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

4. 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 motor vehicle may rescind his agreement and 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 the 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.

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

6. The contract shall contain the following items:

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

(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 one and two;

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

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

(6) The aggregate amount, if any, if a separate identified charge is made therefor,

included for all life, accident or health insurance, specifying the types of coverage and coverage period;

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

(8) The amount of official fees;

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

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

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

(12) The time sale price.

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

(L. 1963 p. 466 § 7, A.L. 1969 H.B. 670 merged with H.B. 684, A.L. 2002 H.B. 2008)

365.080. Insurance included in retail installment transactions - restrictions. - 1. The amount, if any, included in any retail installment transaction for insurance, if a separate identified charge is made for the insurance, which insurance may be purchased by the holder of the contract, shall not exceed the applicable premiums chargeable in accordance with the rates approved by the department of commerce and insurance, of this state where the rates are required by law to be approved by the 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 motor vehicle at his own cost for the protection of the seller or holder, as well as the buyer, but the insurance shall be limited to insurance against substantial risk of loss, damage or destruction of the motor vehicle. Any other insurance, including insurance providing involuntary unemployment coverage, may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer. If the insurance for which the identified charge is made insures the safety or health of the buyer or his interest in the motor vehicle and is purchased by the holder, it shall be subject to the limitations provided for in the regulations promulgated and issued by the director pursuant to the provision of subsection 1 of section 365.060. The holder shall within thirty days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or certificate of insurance, clearly setting forth the amount of the cost of the policy or certificate of insurance, the kinds of insurance, and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract of insurance, or, if a certificate, a summary of the certificate. 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, and further, that the inclusion of the cost of the insurance in the retail installment contract when the buyer selects his agent, broker or company, shall be optional with the seller.

2. 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 installments 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.

3. The amount of any life insurance shall not exceed the amount of the total unpaid balance from time to time; except, that where the buyer's obligation is repayable in payments which are not substantially equal in amount, the 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 6 of section 365.070.

4. Nothing in this chapter shall be construed to prohibit the sale of a deficiency waiver addendum, guaranteed asset protection, extended service contract, or other similar products purchased at the time of sale, as part of a retail sale transaction involving any motor vehicle, or including the cost therefor within a retail installment transaction, provided the requirements of section 365.070 are met.

(L. 1963 p. 466 § 8, A.L. 1989 H.B. 615 & 563, A.L. 2004 S.B. 1233, et al.)

365.090. Transfer of equity in motor vehicle - fee. - A buyer may transfer his equity in the motor vehicle in which the holder has a property interest at any time to another person upon agreement by the holder, but in that event

and if the original buyer is released from further liability the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed fifteen dollars.
(L. 1963 p. 466 § 9)

365.100. Late payment charges, interest on delinquent payments, attorney fees - dishonored or insufficient funds fee - convenience fee imposed, when - 1. For contracts entered into on or after August 28, 2005, if the contract so provides, the holder thereof may charge, finance, and collect:

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

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

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

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

2. 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. 1963 p. 466 § 10, A.L. 1994 S.B. 718, A.L. 2002 S.B. 895, A.L. 2004 S.B. 1233, et al., A.L. 2017 H.B. 292, A.L. 2021 S.B. 106)

365.110. Blank spaces in contract prohibited - exceptions. - No retail installment 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 motor vehicle is not made at the time of the execution of the contract, the identifying number or marks or similar information and the due dates of the installments may be inserted in the contract after its execution, and except that the contract may be so signed provided the buyer is given at the time of the execution a bill of sale, invoice or similar memorandum clearly indicating the cash sale price, the gross down payment and the types of insurance coverage. The buyer's written acknowledgment, conforming to the requirements of subsection 4 of section 365.070, of delivery of a copy of a contract shall be conclusive proof of the delivery, that the contract when signed did not contain any blank spaces except as herein provided, and of compliance with section 365.070 in any action or proceeding by or against a holder of the contract without knowledge to the contrary when he purchased the contract.
(L. 1963 p. 466 § 11)

365.120. Time price differential, computed how. - 1. Notwithstanding the provisions of any other law, the time price differential included in a retail installment transaction on any motor vehicle without regard to the year model designated by the manufacturer, the retail seller may charge, contract and receive any time price differential agreed to by the retail buyer, expressed in the contract as a percent per annum that shall apply to the contract regardless of its repayment schedule.

2. The time price differential shall be computed on the principal balance as a percent per annum. A minimum time price differential of twenty-five dollars may be charged on any retail installment transaction.
(L. 1963 p. 466 § 12, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 2002 HB 2008)

365.125. Rates, parties may agree to a rate, restrictions. - As an alternative to the time price differential authorized by section 365.120, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by section 408.450, RSMo, but any such agreement shall be subject to the restrictions and conditions of sections 408.450 to 408.467, RSMo.
(L. 1984 H.B. 1170)

365.130. Assignment of contract - refinance charge, computed how - extension or deferral of due dates, when. - 1. Any person may purchase or acquire or agree to purchase or acquire from any seller any contract 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 holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledges, mortgages and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of the contract shall be binding upon all subsequent holders.

2. The holder of a retail installment contract upon request by the buyer may agree to an amendment thereto to extend or defer the scheduled due date of all or any part of any installment or installments to renew, restate or reschedule the unpaid balance of such contract, and may collect for same a refinance charge not to exceed an amount computed as follows: If all or any part of any installment or installments is deferred for not more than two months the holder may at his election charge and collect on the amount deferred for the period deferred a refinance charge computed at a rate which will not exceed the same yield as is permitted on monthly payment contracts under subsection 1 of section 365.120; provided that the minimum deferment charge shall be one dollar. Such amendment may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance coverages provided for in the contract and any additional necessary official fees. In any other extension, renewal, restatement or rescheduling of the unpaid balance, the refinance charge may be computed as follows: the sum of the unpaid balance as of the refinancing date and the cost for any insurance and other benefits incidental to the refinancing, any additional necessary official fees, and any accrued delinquency and collection charges, after deducting a refund credit as for prepayment pursuant to section 365.140, shall constitute a principal balance, the refinance charge may be computed for the term of the refinanced contract at the applicable rate for finance charges provided in subsection 1 of section 365.120 obtained by reclassifying the motor vehicle by its year model at the time of the refinancing. The provisions of this chapter relating to minimum finance charges under subsection 2 of section 365.120 and acquisition costs under the refund schedule in section 365.140 shall not apply in calculating refinance charges. The amendment to the contract must be confirmed in a writing which shall set forth the terms of the amendment and the new due dates and amounts of the installments, and shall either be delivered to the buyer or mailed to him at his address as shown on the contract. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

3. Notwithstanding any other provision of this chapter and upon request by the buyer, the holder of a retail installment contract may agree to an amendment thereto to extend or defer the scheduled due dates on such contract with an original amount of six hundred dollars or more, and provided the debtor agrees in writing, the holder may collect a fee in advance for allowing the debtor to defer monthly payments on the credit so long as the fee on each deferred period is no more than the lesser of fifty dollars or ten percent of the loan payments deferred; however, a minimum fee of twenty-five dollars is permitted. In addition, under this subsection no extensions shall be made until the first recurring monthly payment is collected on any one extension of credit, the original time price differential paid to the holder on the retail installment contract remains the same and this subsection applies only to nonprecomputed extensions of credit.
(L. 1963 p. 466 § 12, A.L. 2005 H.B. 248)

365.140. Prepayment of debt under retail installment contract - refund, how computed - proof of payment. - Notwithstanding the provisions of any retail installment contract to the contrary any buyer may prepay in full, whether by payment in cash, extension or renewal, at any time before maturity the debt of any retail installment contract and on so paying the debt shall receive a refund credit thereon for the anticipation of payment. The amount of the refund shall be calculated by the actuarial method. The lender shall retain no more interest than is actually earned whenever a retail installment contract is prepaid. Any insurance rendered unnecessary by reason of prepayment shall be cancelled by the holder and any refund of premiums received by the holder shall be treated in accordance with the provisions of subsection 2 of section 365.080. If a retail installment contract is paid in full, the holder shall provide the buyer proof of payment in full which may be by a letter referencing the contract, which shall include information identifying the contract such as the original loan date, account number or other identifying number or code, or by returning the

original contract or a copy thereof that is marked as paid in full by the holder.
(L. 1963 p. 466 § 13, A.L. 1986 H.B. 1207, A.L. 2002 S.B. 895, A.L. 2021 S.B. 106)

365.145. Default - discrimination, law applicable to retail installment transactions. - Sections 408.551 to 408.562, RSMo, shall apply to any retail installment transaction made pursuant to sections 365.010 to 365.160.
(L. 1984 H.B. 1170)

365.150. Violation a misdemeanor - penalty - recovery barred - correction of violation, effect. - 1. Any person who knowingly violates any provision of this chapter or engages in the business of a sales finance company in this state without a license therefor as provided in this chapter is guilty of a class B misdemeanor.

2. Any person violating section 365.070, 365.080, 365.090, 365.100, 365,110, 365.120, 365.130, 365.140, or 365.145 shall be barred from recovery of any time price differential, delinquency or collection charge on the contract.

3. Notwithstanding the other provisions of this section, the failure to comply with any provision of this chapter with respect to any retail installment transaction may be corrected by the seller or holder within thirty days after the date of the sale, and, if so corrected, neither the seller nor the holder shall be subject to any criminal penalty or civil forfeiture under this chapter for the failure.
(L. 1963 p. 466 § 14, A.L. 1984 H.B. 1170)

365.160. Waiver unenforceable. - Any waiver of the provisions of this chapter is unenforceable and void.
(L. 1963 p. 466 § 15)

365.200 Additional time sales contracts - definitions. - 1. For any motor vehicle which is not subject to the Missouri motor vehicle time sales law as provided in sections 365.010 to 365.160, a seller is permitted to include in the contractual time sale of a motor vehicle the outstanding balance of a prior loan or lease of a motor vehicle used as a trade-in. For the purposes of this section, a "**time sale contract**" is a contract evidencing an installment transaction entered into in this state pursuant to which the title to or a lien upon the motor vehicle which is the subject of the installment transaction is retained or taken by the seller from the buyer as security for the buyer's obligation. The term includes a security agreement or a contract for the bailment or leasing of the motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of a motor vehicle upon satisfying the contract. "**Motor vehicle**" is any new or used automobile, mobile 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.

2. Any seller as provided in this section shall first qualify as a retail seller pursuant to sections 365.010 to 365.160.
(L. 1999 S.B. 386, A.L. 2010 S.B. 630)

CHAPTER 367

PAWNBROKERS AND SMALL LOANS

PAWNBROKER LOANS

Sec.

SMALL LOANS

LOAN BROKERS

TITLE LOANS

CROSS REFERENCES

Interest generally, Chap. 408
Taxation of credit institutions, 148.120 to 148.230
Uniform interest rates, Const. Art. III § 44
Unsecured loans less than five hundred dollars, registration of lenders, when, 408.500

PAWNBROKER LOANS

367.011. Definitions. - As used in sections 367.011 to 367.060, the following words mean:

(1) **"Month"**, that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no such corresponding date, then the last day of such following month, and when computations are made for a fraction of a month, a day shall be one-thirtieth of a month;

(2) **"Net assets"**, the book value of the current assets of a person or pawnbroker less its applicable liabilities as stated in this subdivision. Current assets include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawn service charge. Current assets do not include the investments made in fixed assets of real estate, furniture, fixtures, or equipment; investments made in stocks, bonds, or other securities; or investments made in prepaid expenses or other general intangibles. Applicable liabilities include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses; and notes or other payables that are unsecured or secured in whole or part by current assets. Applicable liabilities do not include liabilities secured by assets other than current assets. Net assets must be represented by a capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors;

(3) **"Pawnbroker",** any person engaged in the business of lending money on the security of pledged goods or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time;

(4) **"Pawnshop",** the location at which or premises in which a pawnbroker regularly conducts business;

(5) **"Person",** an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized;

(6) **"Pledged goods"**, tangible personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction;

(7) **"Secured personal credit loan"**, every loan of money made in this state, the payment of which is secured by a security interest in tangible personal property which is physically delivered into the hands of the lender at the time of the making of the loan and which is to be retained by the lender while the loan is a subsisting obligation.

(L. 1951 p. 281 § 1, A.L. 1965 p. 114, A.L. 1990 H.B. 1125)

367.021. Secured personal credit loans - who may make - interest rate. - 1. Subject only to constitutional police regulations, not affecting the loan fee and the interest rate authorized by this section, in force in any municipality or county wherein secured personal credit loans are made, any person, natural or corporate, may make secured personal credit loans, regardless of the nature and character of any business in which the lender may at the time of making any such loan be engaged, and regardless of whether the lender may at the same time be engaged in making loans in other

classifications, at the same, or at a higher or lower loan fee and interest rate than authorized by this section to be collected and paid to the lender on secured personal credit loans.

2. The maximum rate of interest which may be charged for making and carrying any secured personal credit loan shall not exceed two percent per month on the amount of such loan. Lenders may also charge for the storage and security of such pledged property.

(L. 1951 p. 281 § 2, A.L. 1990 H.B. 1125, A.L. 1993 S.B. 18)

367.031. Receipt for pledged property - contents - definitions - third-party charge for database - access to database information, limitations - error in data, procedure - loss of pawn ticket, effect. - 1. At the time of making any secured personal credit loan, the lender shall execute and deliver to the borrower a receipt for and describing the tangible personal property subjected to the security interest to secure the payment of the loan. The receipt shall contain the following:

(1) The name and address of the pawnshop;

(2) The name and address of the pledgor, the pledgor's description, and the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the pledgor;

(3) The date of the transaction;

(4) An identification and description of the pledged goods, including serial numbers if reasonably available;

(5) The amount of cash advanced or credit extended to the pledgor;

(6) The amount of the pawn service charge;

(7) The total amount which must be paid to redeem the pledged goods on the maturity date;

(8) The maturity date of the pawn transaction; and

(9) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.

2. The pawnbroker may be required, in accordance with local ordinances, to furnish appropriate law enforcement authorities with copies of information contained in subdivisions (1) to (4) of subsection 1 of this section and information contained in subdivision (6) of subsection 4 of section 367.040. The pawnbroker may satisfy such requirements by transmitting such information electronically to a database in accordance with this section, except that paper copies shall be made available for an on-site inspection upon request of any appropriate law enforcement authority.

3. As used in this section, the following terms mean:

(1) **"Database"**, a computer database established and maintained by a third party engaged in the business of establishing and maintaining one or more databases;

(2) **"Permitted user"**, persons authorized by law enforcement personnel to access the database;

(3) **"Reportable data"**, the information required to be recorded by pawnbrokers for pawn transactions pursuant to subdivisions (1) to (4) of subsection 1 of this section and the information required to be recorded by pawnbrokers for purchase transactions pursuant to subdivision (6) of subsection 4 of section 367.040;

(4) **"Reporting pawnbroker"**, a pawnbroker who chooses to transmit reportable data electronically to the database;

(5) **"Search"**, the accessing of a single database record.

4. The database shall provide appropriate law enforcement officials with the information contained in subdivisions (1) to (4) of subsection 1 of this section and other useful information to facilitate the investigation of alleged property crimes while protecting the privacy rights of pawnbrokers and pawnshop customers with regard to their transactions.

5. The database shall contain the pawn and purchase transaction information recorded by reporting pawnbrokers pursuant to this section and section 367.040 and shall be updated as requested. The database shall also contain such security features and protections as may be necessary to ensure that the reportable data maintained in the database can only be accessed by permitted users in accordance with the provisions of this section.

6. The third party's charge for the database shall be based on the number of permitted users. Law enforcement agencies shall be charged directly for access to the database, and the charge shall be reasonable in relation to the costs of the third party in establishing and maintaining the database. No reporting pawnbroker or customer of a reporting pawnbroker shall be charged any costs for the creation or utilization of the database.

7. (1) The information in the database shall only be accessible through the internet to permitted users who have provided a secure identification or access code to the database but shall allow such permitted users to access

database information from any jurisdiction transmitting such information to that database. Such permitted users shall provide the database with an identifier number of a criminal action for which the identity of the pawn or purchase transaction customer is needed and a representation that the information is connected to an inquiry or to the investigation of a complaint or alleged crime involving goods delivered by that customer in that transaction. The database shall record, for each search, the identity of the permitted user, the pawn or purchase transaction involved in the search, and the identity of any customer accessed through the search. Each search record shall be made available to other permitted users regardless of their jurisdiction. The database shall enable reporting pawnbrokers to transmit to the database through the internet reportable data for each pawn and purchase transaction.

(2) Any person who gains access to information in the database through fraud or false pretenses shall be guilty of a class D felony.

8. Any pawnbroker licensed under section 367.043 shall meet the following requirements:

(1) Provide all reportable data to appropriate users by transmitting it through the internet to the database;

(2) Transmit all reportable data for one business day to the database prior to the end of the following business day;

(3) Make available for on-site inspection to any appropriate law enforcement official, upon request, paper copies of any pawn or purchase transaction documents.

9. If a reporting pawnbroker or permitted user discovers any error in the reportable data, notice of such error shall be given to the database, which shall have a period of thirty days in which to correct the error. Any reporting pawnbroker experiencing a computer malfunction preventing the transmission of reportable data or receipt of search requests shall be allowed a period of at least thirty but no more than sixty days to repair such malfunction, and during such period such pawnbroker shall not be deemed to be in violation of this section if good faith efforts are made to correct the malfunction. During the periods specified in this subsection, the reporting pawnbroker and permitted user shall arrange an alternative method or methods by which the reportable data shall be made available.

10. No reporting pawnbroker shall be obligated to incur any cost, other than internet service costs, in preparing, converting, or delivering its reportable data to the database.

11. If the pawn ticket is lost, destroyed, or stolen, the pledgor may so notify the pawnbroker in writing, and receipt of such notice shall invalidate such pawn ticket, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make a written affidavit of the loss, destruction or theft of the ticket. The pawnbroker shall record on the written statement the identifying information required, the date the statement is given, and the number of the pawn ticket lost, destroyed, or stolen. The affidavit shall be signed by a notary public appointed by the secretary of state pursuant to chapter 486 to perform notarial acts in this state.

(L. 1951 p. 281 § 3, A.L. 1965 p. 114, A.L. 1990 H.B. 1125, A.L. 2002 H.B. 1888, A.L. 2005 H.B. 353, A.L. 2014 S.B. 491, A.L. 2020 H.B. 1655)

367.040. Loans due, when - return of collateral, when - restrictions. - 1. Every secured personal credit loan shall be due and payable in lump sum thirty days after the date of the loan contract, or, if extended, thirty days after the date of the last preceding extension of the loan, and if not so paid when due, it shall, on the next day following, be in default. The lender shall retain possession of the tangible personal property subjected to the security interest to secure payment of any secured personal credit loan for a period of sixty days next following the date of default. If, during the period of sixty days, the borrower shall pay to the lender the principal sum of the loan, with the loan fee or fees, and the interest due thereon to the date of payment, the lender shall thereupon deliver possession of the tangible personal property to the borrower. But if the borrower fails, during the period of sixty days, to make payment, then title to the tangible personal property shall, on the day following the expiration of the period of sixty days, pass to the lender, without foreclosure, and the right of redemption by the borrower shall be forever barred.

2. A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction.

3. Except as otherwise provided by sections 367.011 to 367.060, any person properly identifying himself and presenting a pawn ticket to the pawnbroker shall be presumed to be entitled to redeem the pledged goods described therein.

4. A pawnbroker shall not:

(1) Accept a pledge from a person who is under eighteen years of age;

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction;

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under sections 367.011 to 367.060;

(4) Fail to exercise reasonable care to protect pledged goods from loss or damage;

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged as a result of pawnbroker negligence while in the possession of the pawnbroker it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kind of merchandise. Lenders shall not be responsible for loss of pledged articles due to acts of God, acts of war, or riots. Each lender shall employ, if reasonably available in his area, a reputable company for the purpose of fire and theft security;

(6) Purchase or take in trade used or secondhand personal property unless a record is established that contains:

(a) The name, address, physical description, and the driver's license number, military identification number, identification certificate number, or other official number capable of identifying the seller;

(b) A complete description of the property, including the serial number if reasonably available, or other identifying characteristic; and

(c) A signed document from the seller providing that the seller has the right to sell the property.

(L. 1951 p. 281 § 4, A.L. 1965 p. 114, A.L. 1990 H.B. 1125)

367.043. License required - qualifications - oath - bond - accounting - location within one-half mile of excursion gambling boat or facility, prohibited, when. - 1. No person shall operate a pawnshop unless such person obtains a municipal pawnshop license issued pursuant to this section. Each municipality or county may issue a pawnshop license to any person who meets the qualifications of this section. To be eligible for a pawnshop license, an applicant shall:

(1) Be of good moral character;

(2) Have net assets of at least fifty thousand dollars readily available for use in conducting business as a pawnshop for each licensed pawnshop; and

(3) Show that the pawnshop will be operated lawfully and fairly within the purposes of sections 367.011 to 367.060. In addition to the qualifications specified in subdivisions (1) to (3) of this subsection, a municipality or county may also refuse to issue a pawnshop license to any applicant who has a felony or misdemeanor conviction which directly relates to the duties and responsibilities of the occupation of pawnbroker or otherwise makes the applicant presently unfit for a pawnshop license.

2. If the municipality or county is unable to verify that the applicant meets the net assets requirement for a licensed pawnshop, the municipality or county may require a finding, including the presentation of a current balance sheet, by an independent certified public accountant that the accountant has reviewed the books and records of the applicant and that the applicant meets the net assets requirement of this section.

3. An application for a new pawnshop license, the transfer of an existing pawnshop license or the approval of a change in the ownership of a licensed pawnshop shall be under oath and shall state the full name and place of residence of the applicant, the place where the business is to be conducted, and other relevant information required by the municipality or county. If the applicant is a partnership, the municipality or county may require that the application state the full name and address of each member. If the applicant is a corporation, the application shall state the full name and address of each officer, shareholder, and director. The application shall be accompanied by:

(1) An investigation fee of five hundred dollars if the applicant is unlicensed at the time of applying for the pawnshop license or two hundred fifty dollars if the application involves a second or additional license to an applicant previously licensed for a separate location or involves substantially identical principals and owners of a licensed pawnshop at a separate location; and

(2) Proof of general liability if required by the municipality or county, and an annual fee of five hundred dollars.

4. Each applicant for a pawnshop license at the time of filing application shall file with the municipality or county, if the municipality or county so requires, a bond satisfactory to him and in an amount not to exceed five thousand dollars for each license with a surety company qualified to do business in this state. The aggregate liability of such surety shall not exceed the amount stated in the bond. The bond shall run to the state for the use of the state and of any person or persons who may have a cause of action against the obligor of such bond under the provisions of sections 367.011 to 367.060. Such bond shall be conditioned that the obligor will comply with the provisions of sections 367.011 to 367.060 and of all rules and regulations lawfully made by the municipality or county, and will pay to the state and to any such person or persons any and all amounts of money that may become due or owing to the state or to such person or persons

from such obligor under and by virtue of the provisions of sections 367.011 to 367.060 during the time such bond is in effect.

5. Each licensee shall keep, consistent with accepted accounting practices, adequate books and records relating to the licensee's pawn transactions, which books and records shall be preserved for a period of at least two years from the date of the last transaction recorded therein.

6. No person who is lawfully operating a pawnshop on August 28, 1990, shall be required to obtain a license under this section in order to continue operating such pawnshop, so long as such person does not violate any other provision of sections 367.011 to 367.060, except that, if such person is required by the municipality or county to have an occupational license, such person shall be required to pay the five-hundred-dollar annual fee prescribed in subdivision (2) of subsection 3 of this section in lieu of any municipal or county occupational license fee.

7. In addition to the other requirements of this section for licensure, no license shall be issued under this section on or after May 20, 1994, for the initial operation of a pawnshop if such pawnshop is to be located within one-half mile of a site where an excursion gambling boat dock or facility is located or within one-half mile of a site where an application for such an excursion gambling boat dock or facility is on file with the gaming commission prior to the date the application for the pawnshop license is filed. The provisions of this subsection shall not prohibit a pawnshop from being located within one-half mile of a dock or facility or proposed dock or facility described in this subsection if the license for such pawnshop has been issued prior to May 20, 1994.

(L. 1990 H.B. 1125, A.L. 1993 S.B. 18, A.L. 1994, S.B. 740)

367.044. Definitions - pledged goods for money, pawnbroker entitled only to goods pledged, exception, misappropriated goods - procedure to recover. - 1. As used in sections 367.044 to 367.055, the following terms mean:

(1) **"Claimant"**, a person who claims that property in the possession of a pawnbroker is misappropriated from the claimant and fraudulently pledged or sold to the pawnbroker;

(2) **"Conveying customer"**, a person who delivers property into the possession of a pawnbroker, either through a pawn transaction, a sale or trade, which property is later claimed to be misappropriated;

(3) **"Hold order"**, a written legal instrument issued to a pawnbroker by a law enforcement officer commissioned by the law enforcement agency of the municipality or county that licenses and regulates the pawnbroker, ordering the pawnbroker to retain physical possession of pledged goods in the possession of a pawnbroker or property purchased by and in the possession of a pawnbroker and not to return, sell or otherwise dispose of such property as such property is believed to be misappropriated goods;

(4) **"Law enforcement officer"**, the sheriff or sheriff's deputy designated by the sheriff of the county in which the pawnbroker's pawnshop is located, or when the pawnbroker's pawnshop is located within a municipality, the police chief or police officer designated by the police chief of the municipality in which the pawnbroker's pawnshop is located;

(5) **"Misappropriated"**, stolen, embezzled, converted, or otherwise wrongfully appropriated or pledged against the will of the rightful owner or party holding a perfected security interest;

(6) **"Pledgor"**, a person who pledges property to the pawnbroker;

(7) **"Purchaser"**, a person who purchases property from a pawnbroker; and

(8) **"Seller"**, a person who sells property to a pawnbroker.

2. A pawnbroker shall have no recourse against the pledgor for payment on a pawn transaction except the pledged goods themselves, unless the goods are found to have been misappropriated.

3. A pawnbroker shall require of every person from whom the pawnbroker receives sold or pledged property proof of identification which includes a current address and, if applicable, telephone number, and a current picture identification issued by state or federal government.

4. If any seller fails to provide a pawnbroker with proof of identification, the pawnbroker shall hold such property for a period of thirty days prior to selling or otherwise transferring such property, provided, the seller has submitted a signed statement that the seller is the legal owner of the property and stating when or from whom such property was acquired by the seller.

5. To obtain possession of tangible personal property held by a pawnbroker which a claimant claims to be misappropriated, the claimant shall provide the pawnbroker with a written demand for the return of such property, a copy of a police or sheriff's report wherein claimant reported the misappropriation or theft of said property and which contains a particularized

description of the property or applicable serial number, and a signed affidavit made under oath setting forth they are the true owner of the property, the name and address of the claimant, a description of the property being claimed, the fact that such property was taken from the claimant without the claimant's consent, permission or knowledge, the fact that the claimant has reported the theft to the police, the fact that the claimant will assist in any prosecution relating to such property, the promise that the claimant will respond to court process in any criminal prosecution relating to said property and will testify truthfully as to all facts within the claimant's knowledge and not claim any testimonial privilege with respect to said facts. These documents shall be presented to the pawnbroker concurrently.

6. Upon being served with a proper demand by a claimant for the return of property pursuant to subsection 5 of this section, the pawnbroker shall return the property to the claimant, in the presence of a law enforcement officer, within seven days unless the pawnbroker has good reason to believe that any of the matters set forth in the claimant's affidavit are false or if there is a hold order on the property pursuant to section 367.055. If a pawnbroker refuses to deliver property to a claimant upon a proper demand as described in subsection 5 of this section, the claimant may file a petition in a court of competent jurisdiction seeking the return of said property. The nonprevailing party shall be responsible for the costs of said action and the attorney fees of the prevailing party. The provisions of section 482.305, RSMo, to the contrary notwithstanding, a court of competent jurisdiction shall include a small claims court, even if the value of the property named in the petition is greater than three thousand dollars.

7. If a pawnbroker returns property to a claimant relying on the veracity of the affidavit described in subsection 5 of this section, and later learns that the information contained in said affidavit is false or that the claimant has failed to assist in prosecution or otherwise testify truthfully with respect to the facts within the claimant's knowledge, the pawnbroker shall have a cause of action against the claimant for the value of the property. The nonprevailing party shall be responsible for the cost of said action and the attorney fees of the prevailing party.

8. Nothing contained in this section shall limit a pawnbroker from bringing the conveying customer into a suit as a third party, nor limit a pawnbroker from recovering from a conveying customer repayment of the full amount received from the pawnbroker from the pawn or sales transaction, including all applicable fees and interest charged, attorney's fees and the cost of the action.

(L. 1993 S.B. 18, A.L. 1998 H.B. 1526 § 367.044 subsecs. 1 to 5, A.L. 2002 H.B. 1888)

367.045. Customer failure to repay pawnbroker when notified that goods pledged or sold were misappropriated, penalty. - 1. When the tangible personal property subject to the pawn or sales transaction has been delivered or awarded to a claimant pursuant to section 367.044, and within ten business days after a written demand for payment and notice is deposited by the pawnbroker as certified or registered mail in the United States mail and addressed to the conveying customer, the conveying customer fails to repay the pawnbroker the full amount incurred by the pawnbroker in connection with such property and the procedure described in section 367.044, the conveying customer shall have committed the crime of fraudulently pledging or selling misappropriated property.

2. Fraudulently pledging or selling property is a class B misdemeanor if the amount received by the conveying customer from the pawnbroker was less than fifty dollars. Fraudulently pledging or selling property is a class A misdemeanor if the amount received by the conveying customer from the pawnbroker was more than fifty dollars and less than one hundred fifty dollars. Fraudulently pledging or selling property is a class D felony if the amount received by the conveying customer from the pawnbroker was one hundred fifty dollars or more.

(L. 1993 S.B. 18, A.L. 1998 H.B. 1526, A.L. 2014 S.B. 491)

367.046. Procedure to reclaim purchase price of misappropriated goods. - 1. To obtain from a pawnbroker the amount of purchase for tangible personal property which a purchaser claims was misappropriated prior to the purchase, the purchaser shall file a petition in a court of competent jurisdiction in the county where the pawnbroker's pawnshop is located, requesting the return of the purchase amount, naming the pawnbroker as a defendant and serving the pawnbroker with the petition. The provisions of section 482.305, RSMo, to the contrary notwithstanding, a court of competent jurisdiction shall include a small claims court, even if the purchase amount named in the petition is greater than three thousand dollars. Upon receiving notice that a petition has been filed by a purchaser for the amount of purchase, the purchaser shall hold the purchased property until

the right to possession is resolved by the parties or by a court of competent jurisdiction, unless such property is subject to a hold order for law enforcement purposes and a law enforcement officer has provided written acknowledgment that the property has been released to the officer.

2. Upon being served notice that a petition has been filed pursuant to this section, the pawnbroker may return the amount of purchase to the purchaser prior to a decision being rendered on the purchaser's petition by the court. The pawnbroker shall return the amount of purchase to the purchaser conditioned only upon the purchaser withdrawing the petition filed with a court of competent jurisdiction seeking the disposition of such property. The provisions of this section to the contrary notwithstanding, the pawnbroker shall not be required to pay any costs incurred by the purchaser and the purchaser shall not be required to pay any costs incurred by the pawnbroker when the amount of purchase is returned to the purchaser pursuant to this subsection.

3. When a purchaser files a petition pursuant to this section, the pawnbroker may bring the conveying customer of the alleged misappropriated property into the action as a third-party defendant. If after notice to the pawnbroker and an opportunity to add the conveying customer as a defendant, the purchased property is found by a court to have been misappropriated and purchased by the purchaser in good faith, then:

(1) The prevailing purchaser may recover from the pawnbroker the cost of the action, including attorney's fees;

(2) The conveying customer shall be liable to repay the pawnbroker the full amount received from the pawn or sales transaction, including all applicable fees and interest charged and the costs incurred by the pawnbroker in pursuing the procedure described in this section, including attorney's fees.

(L. 1998 H.B. 1526)

367.047. Hold order in effect, pawnbroker may release property to peace officer, not waiver of property rights - sale of property under hold order prohibited. - 1. Upon written notice from a law enforcement officer indicating that property in the possession of a pawnbroker and subject to a hold order is needed for the purpose of furthering a criminal investigation and prosecution, the pawnbroker shall release the property subject to the hold order to the custody of the law enforcement officer for such purpose and the officer shall provide a written acknowledgment that the property has been released to the officer. The release of the property to the custody of the law enforcement officer shall not be considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal investigation, the property shall be returned to the pawnbroker who consented to its release; except that if the law enforcement officer has not completed the criminal investigation within one hundred twenty days after its release, the officer shall immediately return the property to the pawnbroker or obtain and furnish to the pawnbroker a warrant for the continued custody of the property.

2. Except as provided in subsection 1 of this section, the pawnbroker shall not release or dispose of the property except pursuant to a court order or the expiration of the holding period of the hold order including all extensions.

(L. 1993 S.B. 18, A.L. 1998 H.B. 1526)

367.048. Criminal charges filed and disposition of case, notice to pawnbroker, duty of prosecutor or circuit attorney - release of hold order, procedure. - 1. The prosecuting attorney or the circuit attorney shall notify the pawnbroker in writing in cases where criminal charges have been filed and the property may be needed as evidence. The notice shall contain the case number, the style of the case and a description of the property.

2. The pawnbroker shall hold such property until receiving notice of the disposition of the case from the prosecuting attorney or the circuit attorney. The prosecuting attorney or the circuit attorney shall notify the pawnbroker and claimant in writing within fifteen days of the disposition of the case.

(L. 1993 S.B. 18, A.L. 1998 H.B. 1526)

367.049. No criminal or civil liability for pawnbroker exercising due care and good faith. - A licensed pawnbroker, or agent or employee of the licensed pawnbroker, who acts, pursuant to the provisions of sections 367.011 to 367.060, in good faith, exercises due care and follows the provisions of the law, shall not be subject to criminal or civil liability for any such act.

(L. 1993 S.B. 18)

367.050. Violation, penalties. - 1. In addition to any other penalty which may be applicable, any person who operates a pawnshop pursuant to the provisions of sections 367.011 to

367.060, or is required to be licensed pursuant to section 367.043 who willfully violates any provision of sections 367.011 to 367.060 or who willfully makes a false entry in any records specifically required by sections 367.011 to 367.060 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of five thousand dollars, or by confinement in the county jail for not more than six months, or by both such fine and imprisonment. Upon the second conviction of the offense described in this section, in addition to being punishable by fine or imprisonment, the person's pawnshop license shall be permanently revoked; except that there shall be no penalty for a violation resulting from an accidental and bona fide error, where such error is corrected upon discovery.

2. Except as provided in subsection 6 of section 367.043, any person who engages in the business of operating a pawnshop without first securing a license shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of ten thousand dollars or by confinement in the county jail for not more than one year, or by both such fine and imprisonment. Any person who violates the provisions of this subsection shall be permanently prohibited from securing or holding a valid pawnshop license.

(L. 1951 p. 281 § 5, A.L. 1955 p. 241, A.L. 1990 H.B. 1125, A.L. 1998 H.B. 1526)

367.051. Jurisdiction of state courts for all civil actions - nonresident to appoint secretary of state as agent for service. - The sale or pledge of tangible personal property by any person shall be deemed:

(1) An agreement by the person who sells or pledges that the person shall be subject to the jurisdiction of the courts of this state in all civil actions and proceedings, arising out of the pledge or sale transaction, filed either by a resident or nonresident plaintiff;

(2) An appointment by any nonresident of the secretary of state as the person's lawful attorney and agent upon whom may be served all process in suits pertaining to the actions and proceedings arising out of the pledge or sale; and

(3) An agreement by any nonresident that any process in any suit so served shall be of the same legal force and validity as if personally served in this state.

(L. 1998 H.B. 1526 § 367.044 subsec. 6)

367.052. Leased property, rental or installment contracts not misappropriated unless marked - defacing marks, effect - claimant may recover - pawnbroker not liable. - When an item of property is the subject of a lease, rental transaction or retail installment contract with a company domiciled in the state, between the claimant and the claimant's lease or rental customer at the time it is delivered into the possession of the pawnbroker, the property shall not be deemed misappropriated unless it bears a conspicuous permanent label or marking identifying it as the claimant's property. Evidence of defacing or the removal of identification marking of leased or rented property shall be treated as marked and identified and therefore deemed to be misappropriated. Property subject to a lease, rental transaction or retail installment contract with a company domiciled in the state, which is not marked as provided in this subsection may be recovered by the claimant upon payment to the pawnbroker of all moneys owing to or advanced by the pawnbroker in the pawn or purchase transaction, and upon producing evidence identifying the property as having been the property of the claimant and leased or rented at the time the property was placed in the pawnbroker's possession. The pawnbroker shall be free from liability in connection with the recovery of leased or rental property pursuant to this subsection.

(L. 1998 H.B. 1526 § 367.044 subsec. 7)

367.053. Titles, licenses and permits for pledged goods to remain in effect, void when - ownership passing to pawnbroker, right to retitle or relicense. - Any title, license or permit for pledged goods shall remain in effect during the period of the pawn transaction and shall remain valid if such pledged goods are redeemed by the pledgor, and shall be voided if the pledged goods are redeemed by someone other than the pledgor or when ownership of the pledged goods passes to the pawnbroker, who shall retitle, relicense or repermit such goods as otherwise provided by law.

(L. 1998 H.B. 1526 § 367.044 subsec. 8)

367.055. Inspection of property, search warrant required - hold order, probable cause, contents, expiration - confidentiality. - 1. Upon request of a law enforcement officer to inspect property that is described in information furnished by the pawnbroker pursuant to subdivisions (1) to (4) of subsection 1 of section 367.031, the law enforcement officer shall be entitled to inspect the property described, without prior notice or the necessity of obtaining a search

warrant during regular business hours in a manner so as to minimize interference with or delay to the pawnbroker's business operation. When a law enforcement officer has probable cause to believe that goods or property in the possession of a pawnbroker are misappropriated, the officer may place a hold order on the property. The hold order shall contain the following:

(1) The name of the pawnbroker;

(2) The name and mailing address of the pawnshop where the property is held;

(3) The name, title and identification number of the law enforcement officer placing the hold order;

(4) The name and address of the agency to which the law enforcement officer is attached and the claim or case number, if any, assigned by the agency to the claim regarding the property;

(5) A complete description of the property to be held including model and serial numbers;

(6) The expiration date of the holding period.

The hold order shall be signed and dated by the issuing officer and signed and dated by the pawnbroker or the pawnbroker's designee as evidence of the hold order's issuance by the officer, receipt by the pawnbroker and the beginning of the initial holding period. The officer issuing the hold order shall provide an executed copy of the hold order to the pawnbroker for the pawnbroker's record-keeping purposes at no cost to the pawnbroker.

2. Upon receiving the hold order, and subject to the provisions of section 367.047, the pawnbroker shall retain physical possession of the property subject to the order in a secured area. The initial holding period of the hold order shall not exceed two months, except that the hold order may be extended for up to two successive one-month holding periods upon written notification prior to the expiration of the immediately preceding holding period. A hold order may be released prior to the expiration of any holding period or extension thereof by written release from the agency placing the initial hold order. The initial hold order shall be deemed expired upon the expiration date if the holding period is not extended pursuant to this subsection.

3. Upon the expiration of the initial holding period or any extension thereof, the pawnbroker shall deliver written notice to the law enforcement officer issuing the hold order that such order has expired and that title to the property subject to the hold order will vest in the pawnbroker in ten business days. Ownership shall only vest in the pawnbroker upon the expiration of the ten-day waiting period subject to any restriction contained in the pawn contract and subject to the provisions of sections 367.044 to 367.053. Vesting of title and ownership shall be subject to any claim asserted by a claimant pursuant to section 367.044.

4. In addition to the penalty provisions contained in section 367.050, gross negligence or willful noncompliance with the provisions of this section by a pawnbroker shall be cause for the licensing authority to suspend or revoke the pawnbroker's license. Any imposed suspensions or revocation provided for by this subsection may be appealed by the pawnbroker to the licensing authority or to a court of competent jurisdiction.

5. A county or municipality may enact orders or ordinances to license or regulate the operations of pawnbrokers which are consistent with and not more restrictive than the provisions of sections 367.011 to 367.055, except that municipalities located in any county with a charter form of government having a population greater than one million inhabitants or any city not within a county may regulate the number of pawnshop licensees.

6. All records and information that relate to a pawnbroker's pawn, purchase or trade transactions and that are delivered to or otherwise obtained by an appropriate law enforcement officer pursuant to sections 367.031 and 367.040 are confidential and may be used only by such appropriate law enforcement officer and only for the following official law enforcement purposes:

(1) The investigation of a crime specifically involving the item of property delivered to the pawnbroker in a pawn, purchase or trade transaction;

(2) The investigation of a pawnbroker's possible specific violation of the record-keeping or reporting requirements of sections 367.031 and 367.040, but only when the appropriate law enforcement officer, based on a review of the records and the information received, has probable cause to believe that such a violation occurred; and

(3) The notification of property crime victims of where property that has been reported misappropriated can be located.

(L. 1998 H.B. 1526 § 367.051 , A.L. 2002 H.B. 1888)

367.060. Sections 367.011 to 367.060 not to repeal or amend small loan laws. - Nothing in sections 367.011 to 367.060 contained shall be deemed to amend or repeal any of the provisions of sections 367.100 to 367.200 and 408.100 to 408.220, RSMo.

(L. 1951 p. 281 § 7)

SMALL LOANS

367.100. Definitions. - As used in sections 367.100 to 367.200:

(1) **"Consumer credit loans"** shall mean:

(a) Prior to January 1, 2002, loans for the benefit of or use by an individual or individuals:

a. Secured by a security agreement or any other lien on tangible personal property or by the assignment of wages, salary or other compensation; or

b. Unsecured and whether with or without comakers, guarantors, endorsers or sureties;

(b) Beginning January 1, 2002, and thereafter, loans for personal, family or household purposes in amounts of five hundred dollars or more;

(2) **"Director"** shall mean the director of the division of finance or such agency or agencies as may exercise the powers and duties now performed by such director;

(3) **"Lender"** shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender subject to sections 367.100 to 367.200;

(4) **"Person"** shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities, excepting those corporations whose powers emanate from the laws of the United States and those which under other law are subject to the supervisory jurisdiction of the director or the director of the division of credit unions of Missouri;

(5) **"Supervised business"** shall mean the business of making consumer credit loans, as herein defined, of money, credit, goods, or things in action.

(L. 1951 p. 262 § 1, A.L. 1965 p. 114, A.L. 1977 H.B. 48, A.L. 1978 S.B. 745, A.L. 1994 H.B. 1165, A.L. 2001 H.B. 738, A.L. 2001 S.B. 186)

CROSS REFERENCE

Interest rate on small loans, RSMo 408.100 to 408.210

367.110. Certificate of registration required, when. - No lender shall engage in the business of making consumer credit loans as herein defined in this state of money, credit, goods or things in action without first having obtained a certificate of registration from the director as provided in sections 367.100 to 367.200.

(L. 1951 p. 262 § 2)

367.120. Certificate of registration - application for. - Application for a certificate of registration shall be in writing in the form prescribed by the director. No certificate of registration is required until thirty days after sections 367.100 to 367.200 become effective, during which period such application may be made.

(L. 1951 p. 262 § 3)

367.130. Bond - amount - conditions - additional bond, when. - The director may require the lender to file with the director a bond in the principal amount of one thousand dollars at the time of filing the application for a certificate of registration hereunder, or at such later time as the director deems necessary for the purposes of sections 367.100 to 367.200. The lender shall be the obligor, and the surety shall be approved by the director. The bond shall run to the state of Missouri for the use of the state or any person or persons who may have a cause of action against the lender-obligor arising out of the supervised business. The condition of the bond shall be that the lender-obligor will conform to and abide by the provisions of sections 367.100 to 367.200 and the laws of the state of Missouri relating to consumer credit loans, and the assignment or sale of wages, salaries, or other compensation, and will pay to the state and to any person any and all moneys that may become due under sections 367.100 to 367.200 or under any transaction which is a part of the supervised business. If in the opinion of the director the bond shall at any time appear to be insecure or exhausted or otherwise doubtful an additional bond in the principal sum of not more than one thousand dollars in form and with surety satisfactory to the director, shall be filed within fifteen days after notice of the requirement thereof be given to the lender by the director.

(L. 1951 p. 262 § 4)

367.140. Annual registration - fee, amount - certificates, issuance, display. - 1. Every lender shall, at the time of filing application for certificate of registration as provided in section 367.120 hereof, pay the sum of five hundred dollars as an annual registration fee for the period ending the thirtieth day of June next following the date of payment and in full payment of all expenses for investigations, examinations and for the administration of sections 367.100 to 367.200, except as provided in section 367.160, and thereafter a like fee shall be paid on or before June thirtieth of each year; provided, that if a

lender is supervised by the commissioner of finance under any other law, the charges for examination and supervision required to be paid under said law shall be in lieu of the annual fee for registration and examination required under this section. The fee shall be made payable to the director of revenue. If the initial registration fee for any certificate of registration is for a period of less than twelve months, the registration fee shall be prorated according to the number of months that said period shall run. 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.

2. Upon receipt of such fee and application for registration, and provided the bond, if required by the director, has been filed, the director shall issue to the lender a certificate containing the lender's name and address and reciting that such lender is duly and properly registered to conduct the supervised business. The lender shall keep this certificate of registration posted in a conspicuous place at the place of business recited in the registration certificate. Where the lender engages in the supervised business at or from more than one office or place of business, such lender shall obtain a separate certificate of registration for each such office or place of business.

3. Certificates of registration shall not be assignable or transferable except that the lender named in any such certificate may obtain a change of address of the place of business therein set forth. Each certificate of registration shall remain in full force and effect until surrendered, revoked, or suspended as herein provided.

(L. 1951 p. 262 § 5, A.L. 1986 H.B. 1195, A.L. 2003 S.B. 346, A.L. 2015 H.B. 587 merged with S.B. 345)

367.160. Examination of lenders - authority of director - lender to pay costs, when. - The director, his deputies and examiners shall have full power and authority at any time and as often as reasonably necessary to investigate or examine the supervised business, affairs and loans made in the supervised business of any registered lender and of every person, firm, partnership and corporation making loans who the director has reasonable grounds to believe is subject to and violating the provisions of sections 367.100 to 367.200, for the purpose of ascertaining whether or not the lender, or such person, firm, partnership or corporation is complying with the provisions of sections 367.100 to 367.200 and the laws of Missouri relating to consumer credit loans or assignment or sale of wages or salary or other compensation. In connection with any such investigation or examination the director and his representatives shall have free and immediate access to the lender's place or places of business and his or its books and records and shall have the right and power to examine under oath all persons whomsoever whose testimony may be required relative to the affairs and business of the particular lender. Whenever it is necessary to examine the business and loans of a registered lender more than once a year or of any other lender at any time, then the lender shall be chargeable with and be required to pay the necessary cost and expenses thereof, including the actual travel expenses and a per diem of one hundred dollars for each examining official while engaged in travel to and from the place of such examination and during the period required for such examination. Whenever any lender is subject to examination by or required to make reports to municipal officers under city ordinances regulating the supervised business, such examinations or reports shall be in lieu of the examinations and reports required by the provisions of sections 367.100 to 367.200.

(L. 1951 p. 262 § 7, A.L. 1986 H.B. 1195)

367.170. Regulations - authority of director - insurance - premiums deemed not to be charges. - The director is authorized and empowered to make such general regulations as may be necessary for the enforcement of sections 367.100 to 367.200 and shall issue regulations providing and governing the types and limits of insurance and the issuance of policies which may be sold in connection with consumer credit loans. The cost of any insurance shall not exceed the standard rates and the insurance shall be obtained from an insurance company duly authorized to conduct business in this state and the registrant, or any of its employees, may be licensed as an insurance agent. Insurance premiums shall not be considered as interest, service charges or fees in connection with any loan. Each such regulation shall be consistent with sections 367.100 to 367.200 and shall be referenced to the specific provision of sections 367.100 to 367.200 which is to be enforced by it. Nothing in this section shall alter or amend the statutes of this state relating to insurance or affect the powers of the director of insurance under statutes relating to credit life insurance and credit accident and health insurance.

(L. 1951 p. 262 § 8, A.L. 1984 S.B. 686 § 367.170 subsec. 1)

367.180. Lender to keep records. - Every lender shall keep books and records of the supervised business.
(L. 1951 p. 262 § 9)

367.185. Loan solicitation, disclosures. - 1. Every nondepository financial institution licensed under sections 367.100 to 367.215 and otherwise defined as a person in section 367.100 shall comply with the provisions of this section.

2. In addition to any disclosures otherwise provided by law, such person soliciting loans using facsimile or negotiable checks shall disclose the following:

"THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT."

This notice shall be printed in not less than ten-point bold type and shall appear directly on the face of the check.

3. When such persons make loans secured by real estate as otherwise provided by law, such persons shall include in a printed portion of the contract the following notice:

"WARNING TO BORROWER: DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT."

This notice shall be printed in not less than ten-point bold type.

4. When making or negotiating loans, such person shall take into consideration in determining the size and duration of a loan contract the financial ability of borrowers to reasonably repay the loan in the time and manner as specified in the loan contract.

5. Such person shall post in a conspicuous location in each licensed office the maximum rates and fees that such person is currently charging on any loans made.
(L. 1998 S.B. 792)

367.190. Certificates of registration - suspension, revocation, when - hearing - review. - In the event any lender fails, refuses, or neglects to comply with the provisions of sections 367.100 to 367.200, or of any laws of the state of Missouri relating to consumer credit loans or assignment or sale of wages, or salaries or other compensation, his or its certificate of registration for the place of business at which the violation occurred, may be suspended or revoked by order of the director after a hearing before said director on any order to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the particular lender at least ten days prior to the hearing. Such action shall not affect any rights or charter powers which any state bank, state trust company or national banking association has by virtue of any other law. Review may be had of any such order made and entered by the director in the manner provided by law.
(L. 1951 p. 262 § 10)

367.200. Violations - penalty. - If any person, firm, partnership or corporation to whom or which sections 367.100 to 367.200 apply, or any officer, agent or representative of such person, firm, partnership or corporation violates any of the provisions of said sections or shall attempt to transact any supervised business whatsoever in the name or on behalf of such person, firm, partnership or corporation, while he or it fails or refuses to comply with provisions of sections 367.100 to 367.200, each such person, firm, partnership, or corporation, agent, officer, or representative shall be deemed guilty of a misdemeanor.
(L. 1951 p. 262 § 11)

367.205. Annual audit by certified public accountant required. - All persons and entities licensed under the provisions of sections 367.100 to 367.200 shall cause an audit to be made once each year by a certified public accountant firm, of which at least one partner is the holder of a Missouri certified public accountant license. In the event that entities licensed under the provisions of sections 367.100 to 367.200 are affiliated with entities which engage in other than such licensed activities in this state or elsewhere, an audit of the financial statements which consolidate the financial statements of the licensee, made according to generally accepted auditing standards, will be sufficient for the purpose of sections 367.205 to 367.215.
(L. 1972 S.B. 405 § 1)

367.210. Audit report to director of finance, when. - A copy of the report of the audit required by section 367.205 shall be delivered to the director of finance of the state of Missouri at least thirty days prior to the license renewal date.
(L. 1972 S.B. 405 § 2)

367.215. Failure to file audit report, effect of - surety bond posted, when. - The director of finance shall not issue a renewal license to any person or entity licensed under the provisions of sections 367.100 to 367.200 unless the audit report is furnished as required by section 367.210. In lieu of the requirements of sections 367.205 to 367.215, the licensee may post a surety bond in the amount of one hundred thousand dollars. The bond shall be in a form satisfactory to the director and shall be issued by a bonding or insurance company authorized to do business in the state to secure compliance with all laws relative to consumer credit. If, in the opinion of the director, the bond shall at any time appear to be inadequate, insecure, exhausted, or otherwise doubtful, additional bond in a form and with surety satisfactory to the director shall be filed within fifteen days after the director gives notice to the licensee. A licensee may, in lieu of filing any bond required under this section, provide the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any bank, trust company, savings and loan or credit union operating in Missouri.
(L. 1972 S.B. 405 § 3, A.L. 2001 H.B. 738 merged with S.B. 186)

LOAN BROKERS

367.300. Definitions. - As used in sections 367.300 to 367.310, unless the context otherwise requires, the following terms shall mean:

(1) **"Advance fee"**, any consideration which is assessed or collected prior to the closing by a loan broker;

(2) **"Borrower"**, a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit;

(3) **"Loan"**, an agreement to advance money or property in return for the promise to make payments therefor;

(4) **"Loan broker"**, any person; except any bank, savings and loan association, trust company, building and loan association, credit union, retail installment sales company, securities broker-dealer, real estate broker or salesperson, attorney, federal housing administration or veterans' administration approved lender, credit card company, installment loan licensee, mortgage banker or lender, or insurance company, provided that the person excepted is licensed by or subject to regulation or supervision of any agency of the United States or this state and, if licensed, is acting within the scope of the license; and also excepting subsidiaries of licensed or chartered banks or savings and loan associations; who:

(a) For or in expectation of consideration arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

(b) For or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(c) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(d) Holds himself out as a loan broker;

(5) **"Principal"**, any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.
(L. 1992 S.B. 705)

367.305. Advance fee prohibited, penalty. - 1. No loan broker shall charge, assess, collect or receive an advance fee from a borrower to provide services as a loan broker.

2. The knowing charging, assessment, collection or receipt of an advance fee, in violation of this section, is a class A misdemeanor.
(L. 1992 S.B. 705)

367.307. Principal liable. - Each principal of a loan broker shall be liable under sections 407.010 to 407.140, RSMo, for the actions of the loan broker, including its agents or employees, in the course of business of the loan broker.
(L. 1992 S.B. 705)

367.310. Violations deemed unlawful practice, penalty - attorney general, powers - penalties not exclusive - other rights not affected. - 1. Violation of any provision of sections 367.300 to 367.310 shall be deemed an unlawful practice under sections 407.010 to 407.130, RSMo, and shall be subject to all

penalties, remedies and procedures provided in sections 407.010 to 407.130, RSMo. The attorney general shall have all powers, rights and duties regarding violations of sections 367.300 to 367.310 as are provided in sections 407.010 to 407.130, RSMo, and shall have the rulemaking authority as provided in section 407.145, RSMo.

2. The provisions of sections 367.300 to 367.310 are not exclusive. The remedy specified in sections 367.300 to 367.310 for violation of sections 367.300 to 367.310 or for conduct described in sections 367.300 to 367.310 shall be in addition to any other procedures or remedies for any violation or conduct provided for by any other law, including chapter 407, RSMo. Nothing in sections 367.300 to 367.310 shall limit any other statutory or any common law rights of the attorney general, any circuit attorney or prosecuting attorney, or any other person. If any act or practice prescribed by sections 367.300 to 367.310 is also the basis for a cause of action in common law or a violation of another statute, the purchaser may assert the common law or statutory cause of action under the procedures and with the remedies applicable thereto.

(L. 1992 S.B. 705)

TITLE LOANS

367.500. Definitions. - As used in sections 367.500 to 367.533, unless the context otherwise requires, the following terms mean:

(1) **"Borrower"**, a person who borrows money pursuant to a title loan agreement;

(2) **"Capital"**, the assets of a person less the liabilities of that person. Assets and liabilities shall be measured according to generally accepted accounting principles;

(3) **"Certificate of title"**, a state-issued certificate of title or certificate of ownership for personal property;

(4) **"Director"**, the director of the division of finance or its successor agency;

(5) **"Person"**, any resident of the state of Missouri or any business entity formed under Missouri law or duly qualified to do business in Missouri;

(6) **"Pledged property"**, personal property, ownership of which is evidenced and delineated by a title;

(7) **"Title lender"**, a person qualified to make title loans pursuant to sections 367.500 to 367.533 who maintains at least one title lending office within the state of Missouri, which office is open for the conduct of business not less than thirty hours per week, excluding legal holidays;

(8) **"Title lending office"** or **"title loan office"**, a location at which, or premises in which, a title lender regularly conducts business;

(9) **"Title loan agreement"**, a written agreement between a borrower and a title lender in a form which complies with the requirements of sections 367.500 to 367.533. The title lender shall perfect its lien pursuant to sections 301.600 to 301.660, RSMo, but need not retain physical possession of the titled personal property at any time; and

(10) **"Titled personal property"**, any personal property excluding property qualified to be a personal dwelling the ownership of which is evidenced by a certificate of title.

(L. 1998 H.B. 1526 § 1, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2008 S.B. 788)

367.503. Allows division of finance to regulate lending on titled property. 1. The director shall administer and regulate sections 367.500 to 367.533. The director, deputy director, other assistants and examiners, and all special agents and other employees shall keep all information concerning title lenders confidential as required by sections 361.070 and 361.080, RSMo.

2. No employee of the division of finance shall have any ownership or interest in any title loan business or receive directly or indirectly any payment or gratuity from any such entity.

3. The director shall issue as many title loan licenses as may be applied for by qualified applicants.

4. No rule or portion of a rule promulgated pursuant to the authority of sections 367.500 to 367.533 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

(L. 1998 H.B. 1526 § 2, A.L. 2001 H.B. 738 merged with S.B. 186)

367.506. Licensure of title lenders, penalty. - 1. Any person who acts as a title lender without a title loan license is subject to both civil and criminal penalties.

2. All title loan agreements entered into by a person who acts in violation of the licensing requirements of sections 367.500 to 367.533, and all title pledges accepted by such person, shall be null and void. Any borrower who enters into a title loan agreement with a person who acts in violation of the provisions of sections 367.500 to 367.533 shall not be bound by such agreement, and such borrower's only liability shall be for the return of the principal.

3. The attorney general may initiate a civil action against any person who acts as a title lender without a title loan license. Such action shall be commenced in the circuit court for any county in which the person executed any title loan agreement and any county in which any of the pledged titled personal property is normally kept. The civil penalty for title lending without a title loan license shall be not less than one thousand dollars and not more than five thousand dollars for each day that a person acts in violation of the licensing requirement. If the violation of the licensing requirement is intentional or knowing, the person shall be barred from applying for a title loan license for a period of five years from the date of the last violation.

4. A first offense violation of the licensing requirement pursuant to this section shall be a class C misdemeanor. Second and subsequent offenses shall be class A misdemeanors. For purposes of jurisdiction and venue, the crime of unlawful title lending shall be deemed to have occurred in both the county in which an unlawful title loan agreement was executed and the county in which the pledged property is normally kept.

(L. 1998 H.B. 1526 § 3, A.L. 2001 H.B. 738 merged with S.B. 186)

367.509. Qualifications of applicants, fee, license issued, when. - 1. A title loan license applicant must have and maintain capital of at least seventy-five thousand dollars at all times.

2. The license application 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 formation if a business entity, the address of each title loan office operated or sought to be operated, the name and residential address of the owner, partners, directors, trustees and principal officers, and such other pertinent information as the director may require. A corporate surety bond in the principal sum of twenty thousand dollars per location shall accompany each license application. The bond shall be in a form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state in order to ensure the faithful performance of the obligations of the applicant and the applicant's agents and subagents in connection with title loan activities. An applicant or licensee may, in lieu of filing any bond required pursuant to this section, provide the director with an irrevocable letter of credit as defined in section 400.5-103, RSMo, in the amount of twenty thousand dollars per location, issued by any bank, trust company, savings and loan or credit union operating in Missouri in a form acceptable to the director.

3. Every person applying for a title loan license shall pay one thousand dollars as an investigation fee. Applicants for additional title lending licenses shall pay one thousand dollars per additional location as an investigation fee. The lender shall, beginning with the first license renewal, pay annually to the director a fee of one thousand dollars for each licensed location.

4. Each license shall specify the location of the title loan office and shall be conspicuously displayed therein. Before any title lending office may relocate, the director shall approve such relocation by mailing the licensee a new license to that effect, without charge.

5. Upon the filing of the application, and the payment of the fee, by a person eligible to apply for a title loan license, the director shall issue a license to engage in the title loan business in accordance with sections 367.500 to 367.533. The licensing year shall commence on January first and end the following December thirty-first. 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. Each license shall be uniquely numbered and shall not be transferable or assignable.

(L. 1998 H.B. 1526 § 4, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2003 S.B. 346)

367.512. Title loan requirements - liability of borrower. - 1. Every title loan, and each extension or renewal of such title loan, shall be in writing, signed by the borrower and shall provide that:

(1) The title lender agrees to make a loan to the borrower, and the borrower agrees to give the title lender a security interest in unencumbered titled personal property;

(2) Whether the borrower consents to the title lender keeping possession of the certificate of title;

(3) The borrower shall have the right to redeem the certificate of title by repaying the loan in full and by complying with the title loan agreement which may be for any agreed period of time not less than thirty days;

(4) The title lender shall renew the title loan agreement upon the borrower's written request and the payment by the borrower of any interest due at the time of such renewal. However, upon the third renewal of any title loan agreement, and any subsequent renewal, the borrower shall reduce the principal by ten percent until such loan is paid in full;

(5) When the loan is satisfied, the title lender shall release its lien and return the title to the borrower;

(6) If the borrower defaults, the title lender shall be allowed to take possession of the titled personal property after compliance with chapter 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo;

(7) Upon obtaining possession of the titled personal property in accordance with chapter 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo, the title lender shall be authorized to sell the titled personal property in accordance with chapter 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo, and to convey to the buyer thereof good title thereto.

2. Any borrower who obtains a title loan under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property shall be personally liable to the title lender for the full amount stated in the title loan agreement.

(L. 1998 H.B. 1526 § 5, A.L. 2001 H.B. 738 merged with S.B. 186)

367.515. Interest and fees. - A title lender shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140, RSMo.

(L. 1998 H.B. 1526 § 6, A.L. 2001 H.B. 738 merged with S.B. 186)

367.518. Title loan agreements, contents, form. - 1. Each title loan agreement shall disclose the following:

(1) All disclosures required by the federal Truth in Lending Act and regulation Z;

(2) That the transaction is a loan secured by the pledge of titled personal property and, in at least ten-point bold type, that nonpayment of the loan may result in loss of the borrower's vehicle or other titled personal property;

(3) The name, business address, telephone number and certificate number of the title lender, and the name and residential address of the borrower;

(4) The monthly interest rate to be charged;

(5) A statement which shall be in at least ten-point bold type, separately acknowledged by the signature of the borrower and reading as follows: You may cancel this loan without any costs by returning the full principal amount to the lender by the close of the lender's next full business day;

(6) The location where the titled personal property may be delivered if the loan is not paid and the hours such location is open for receiving such deliveries; and

(7) Any additional disclosures deemed necessary by the director or required pursuant to sections 400.9-101 to 400.9-710, RSMo.

2. The division of finance is directed to draft a form to be used in title loan transactions. Use of this form is not mandatory; however, use of such form, properly completed, shall satisfy the disclosure provisions of this section.

(L. 1998 H.B. 1526 § 7, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2002 S.B. 895)

367.521. Redemption of certificate of title - expiration or default, lender may proceed against collateral. - The borrower shall be entitled to redeem the security by timely satisfaction of the terms of the title loan agreement. Upon expiration or default of a title loan agreement, the title lender may proceed against the collateral pursuant to chapter 400, RSMo, and with sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo.

(L. 1998 H.B. 1526 § 8, A.L. 2001 H.B. 738 merged with S.B. 186)

367.524. Records of loan agreements. - 1. Every title lender shall keep a consecutively numbered record of each title loan agreement executed, which number shall be placed on the corresponding title loan agreement itself. Such record shall include the following:

(1) A clear and accurate description of the titled personal property, including its vehicle identification or serial number, license plate number, year, make, model, type, and color;

(2) The date of the title loan agreement;

(3) The amount of the loan;

(4) The date of maturity of the loan; and

(5) The name, date of birth, Social Security number, residential address, and the type of photo identification of the borrower.

2. The title lender shall photocopy the photo identification of the borrower or shall take an instant photograph of the borrower, and shall attach such photocopy or photograph to the lender's copy of the title loan agreement and all renewals.

3. The borrower shall sign the title loan agreement and shall be provided with a copy of such agreement. The title lender, or the lender's employee or agent shall also sign the title loan agreement. The title lender shall provide each

customer with and retain a photocopy of the pledged title at the time the note is signed.

4. The title lender shall keep the numbered records and copies of its title loan agreements, including a copy of the notice required pursuant to subsection 1 of section 367.525, for a period of no less than two years from the date of the closing of the last transaction reflected therein. A title lender who ceases engaging in the business of making title loans shall keep these records for at least two years from the date the lender ceased engaging in the business. A title lender must notify the director to request an examination at least ten days before ceasing business.

5. The records required by this section shall be made available for inspection by any employee of the division of finance upon request during ordinary business hours without warrant or court order.

(L. 1998 H.B. 1526 § 9, A.L. 2001 H.B. 738 merged with S.B. 186)

367.525. Notice to borrower prior to acceptance of title loan application. - 1. Before accepting a title loan application, the lender shall provide the borrower the following notice in at least ten-point bold type and receipt thereof shall be acknowledged by signature of the borrower:

(Name of Lender)
NOTICE TO BORROWER
(1.) Your automobile title will be pledged as security for the loan. If the loan is not repaid in full, including all finance charges, you may lose your automobile.
(2.) This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.
I have read the above "NOTICE TO BORROWER" and I understand that if I do not repay this loan that I may lose my automobile.
_____ Borrower _____ Date

2. If the loan is secured by titled personal property other than an automobile, the lender shall either provide a form with the proper word describing the security or else shall strike the word "automobile" from the three places it appears, write or print in the type of titled personal property serving as security and have the customer initial all three places.

3. The title lender shall post in a conspicuous location in each licensed office, in at least fourteen-point bold type the maximum rates that such title lender is currently charging on any loans made and the statement:

NOTICE:
Borrowing from this lender places your automobile at risk. If this loan is not repaid in full, including all finance charges, you may lose your automobile.
This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.

4. When making or negotiating loans, the title lender shall take into consideration in determining the size and duration of a loan contract the financial ability of the borrower to reasonably repay the loan in the time and manner specified in the loan contract.

(L. 2001 H.B. 738 merged with S.B. 186)

367.527. Limitations of title lenders. - 1. A title lender shall not:

(1) Accept a pledge from a person under eighteen years of age or from anyone who appears to be intoxicated;

(2) Make a loan which exceeds five thousand dollars;

(3) Accept any waiver of any right or protection of a borrower;

(4) Fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;

(5) Purchase titled personal property in the operation of its business;

(6) Enter into a title loan agreement unless the borrower presents clear title at the time that the loan is made;

(7) Knowingly violate any provision of sections 367.500 to 367.533 or any rule promulgated thereunder;

(8) Violate any provision of sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo; or

(9) Store repossessed titled personal property at a location more than fifteen miles from the office where the title loan agreement was executed.

2. If a title lender enters into a transaction contrary to this section, the loan and the lien shall be void.

(L. 1998 H.B. 1526 § 10, A.L. 2001 H.B. 738 merged with S.B. 186)

367.530. Safekeeping of certificates of title - liability insurance maintained, when - liability of title lender. - 1. Every title lender shall maintain a fireproof place for the pledged certificates of title and a safe place for pledged

property delivered to or repossessed by the title lender.

2. Every title lender shall maintain premises liability insurance in an amount of not less than one million dollars per occurrence for the benefit of customers and employees, which insurance shall provide coverage for, among other risks, injuries caused by the criminal acts of third parties.

3. A title lender shall not be liable for any loss or injury occasioned or caused by the use of pledged property unless the pledged property is actually in the title lender's possession.

4. A title lender shall be strictly liable to the borrower for any loss to pledged property in the title lender's possession.

(L. 1998 H.B. 1526 § 11, A.L. 2001 H.B. 738 merged with S.B. 186)

367.531. Applicability to certain transactions. - The provisions of sections 408.552 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo, are applicable to all transactions pursuant to sections 367.500 to 367.533.

(L. 2001 H.B. 738 merged with S.B. 186)

367.532. Violations, penalties. - 1. Any title lender which fails, refuses or neglects to comply with sections 367.500 to 367.533, sections 408.551 to 408.557, RSMo, sections 408.560 to 408.562, RSMo, or any laws relating to title loans or commits any criminal act may have its license suspended or revoked by order of the director after a hearing before said director on an order of the director to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the title lender at least ten days prior to the hearing.

2. Whenever it shall appear to the director that any title lender is failing, refusing or neglecting to make a good faith effort to comply with the provisions of sections 367.500 to 367.533, or any laws relating to consumer loans, the director may issue an order to cease and desist which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(L. 2001 H.B. 738 merged with S.B. 186)

367.533. Pawn or pawnbroker title prohibited. - No business licensed pursuant to sections 367.500 to 367.530 shall use the terms "pawn" or "pawnbroker" in its title, business name or advertising.

(L. 1998 H.B. 1526 § 12)

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CHAPTER 381

TITLE INSURANCE LAW

CLOSING REAL ESTATE SALE, REQUIREMENTS FOR SETTLEMENT AGENT

CLOSING REAL ESTATE SALE, REQUIREMENTS FOR SETTLEMENT AGENT

381.410. Definitions. - As used in this section and section 381.412, the following terms mean:

(1) **"Cashier's check"**, a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) **"Certified funds"**, United States currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) **"Director"**, the director of the department of commerce and insurance, unless the settlement agent's primary regulator is another department. When the settlement agent is regulated by such department, that department shall have jurisdiction over this section and section 381.412;

(4) **"Financial institution"**:

(a) A person or entity doing business under the laws of this state or the United States relating to banks, trust companies, savings and loan associations, credit unions, commercial and consumer finance companies, industrial loan companies, insurance companies, small business investment corporations licensed under the Small Business Investment Act of 1958, 15 U.S.C. Section 661, et seq., as amended, or real estate investment trusts as defined in 26 U.S.C. Section 856, as amended, or institutions constituting the Farm Credit System under the Farm Credit Act of 1971, 12 U.S.C. Section 2000, et seq., as amended; or

(b) A mortgage loan company or mortgage banker doing business under the laws of this state or the United States which is subject to licensing, supervision, or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans' Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer, if their principal place of business is in Missouri or a state which is contiguous to Missouri;

(5) **"Settlement agent"**, a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar, or a person licensed under chapter 339, RSMo.

(L. 1996 S.B. 664, A.L. 2000 S.B. 894, A.L. 2007 S.B. 66, A.L. 2008 S.B. 788)

381.412. Settlement agents, accepting funds, exemption - title insurer, deposit of funds - violation, fine. - 1. A settlement agent who accepts funds of more than two thousand five hundred dollars for closing a real estate transaction shall require a buyer, seller, or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. A check shall be exempt from the provisions of this section if drawn on:

(1) An escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo; or

(2) An escrow account of a title insurer or title insurance agency licensed to do business in Missouri; or

(3) An agency of the United States of America, the state of Missouri, or any county or municipality of the state of Missouri; or

(4) An account by a financial institution.

2. It is unlawful for any title insurer, title agency, or title agent, as defined in section 381.009*, to make any payment, disbursement or

withdrawal from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement, or withdrawal; or

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. A violation of any provision of this section is a level two violation under section 374.049, RSMo.

(L. 1996 S.B. 664, A.L. 1997 S.B. 148, A.L. 2000 S.B. 894, A.L. 2007 S.B. 66, A.L. 2008 S.B. 1009)

*Section 381.009 was repealed by S.B. 66, 2007.

CHAPTER 385

CREDIT INSURANCE AND SERVICE CONTRACTS

Sec.

385.010. Purpose clause. - The purpose of sections 385.010 to 385.080 is to promote the public welfare by regulating credit life insurance and credit accident and sickness insurance, credit casualty insurance, credit involuntary unemployment insurance and credit property insurance. Nothing in sections 385.010 to 385.080 is intended to prohibit or discourage reasonable competition. The provisions of sections 385.010 to 385.080 shall be liberally construed.
(L. 1977 H.B. 610 § 1, A.L. 1992 S.B. 519)

385.015. Scope of law. - All life insurance, accident and sickness insurance, involuntary unemployment insurance, credit casualty insurance, and property insurance written in connection with loans or other credit transactions shall be subject to the provisions of sections 385.010 to 385.080, except insurance for which no identifiable charge is made to the debtor and insurance written in connection with a loan or other credit transaction of more than fifteen years duration; nor shall insurance be subject to the provisions of sections 385.010 to 385.080 if the issuance of the insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor or where the issuance of such insurance is in connection with a residential real estate secured credit transaction commitment exceeding twenty-five thousand dollars, which may be accessed on a discretionary basis by the debtor.
(L. 1977 H.B. 610 § 2, A.L. 1987 H.B. 510, A.L. 1992 S.B. 519, A.L. 2020 S.B. 599)

385.020. Definitions. - 1. As used in sections 385.010 to 385.080, the following words and phrases mean:

(1) **"Credit accident and sickness insurance"**, insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(2) **"Credit casualty insurance"**, insurance other than credit life insurance, credit accident and sickness insurance, credit involuntary unemployment insurance, or credit property insurance, by which the satisfaction of a debt in whole or in part is a benefit provided upon the occurrence of any unknown or contingent event whatever, when such insurance is sold to individual consumers and written as part of a credit transaction, but only insofar as it applies to personal debt incurred by individual consumers and not debt incurred in any business, trade or profession of the debtor;

(3) **"Credit involuntary unemployment insurance"**, insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined in the policy;

(4) **"Credit life insurance"**, insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(5) **"Credit property insurance"**, insurance against loss of or damage to personal property, covering a creditor's security interest in such property, when such insurance is written as part of a loan or other credit transaction, but only insofar as it applies to property sold to individual consumers for personal use, or pledge by them, and not used in any business, trade or profession of the purchaser, except that such insurance shall not mean homeowners', renters' or lessees' insurance;

(6) **"Creditor"**, the lender of money or vendor or lessor of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and any affiliate, associate, or subsidiary of any of them, or any director, officer, or employee of any of them, or any other person in any way associated with any of them, including a holding company;

(7) **"Debtor"**, a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction;

(8) **"Decreasing term life coverage"**, credit life insurance decreasing over the term of the coverage to correspond with the scheduled or actual amount of unpaid indebtedness, whichever is greater;

(9) **"Director"**, director of the Missouri department of commerce and insurance;

(10) **"Identifiable charge"**, the amount a creditor charges a debtor or collects from him specifically for credit insurance in addition to any other stated charges, including interest or discount, permitted by law;

(11) **"Indebtedness"**, the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction;

(12) **"Insurer"**, an insurance company authorized to write credit life insurance, credit accident and sickness insurance, credit casualty insurance, credit involuntary unemployment insurance or credit property insurance;

(13) **"Joint life coverage"**, credit life insurance covering two or more lives, the entire sum insured being payable upon the death of the first insured debtor to die while the insurance is in force;

(14) **"Level term life coverage"**, credit life insurance remaining level over the term of the coverage.

2. As used in sections 385.010 to 385.080, the following technical terms shall have the indicated meanings:

(1) **"Claims"**, benefits payable on death, disability, debt default, involuntary unemployment or property damage, excluding loss adjustment expense, claims settlement costs, or other additions of any kind;

(2) **"Claims incurred"**, claims actually paid during the reporting year plus the estimated reserves at the end of the year for reported claims in the process of settlement and for unreported claims, less the corresponding estimated reserves at the end of the preceding year. All reserves are to be determined in a consistent manner from year to year;

(3) **"Credibility period"**, as of any point of time the period of at least three years, immediately prior thereto;

(4) **"Premiums earned"**, the total gross premiums which become due the insurer, without reduction of any kind, except the premiums refunded or adjusted on account of termination of coverage, appropriately adjusted for changes in gross unearned premiums in force upon a pro rata basis or a "sum of the digits" basis, where applicable. Where premiums are payable monthly on the basis of outstanding insured balances, **"premiums earned"** means the total premiums paid the insurer during the reporting year plus premiums due the insurer but unpaid at the end of that year, less premiums due the insurer but unpaid at the end of the previous year. As defined under either system, premiums are without reduction of any kind except for those refunded or adjusted because of termination of coverage.

(L. 1977 H.B. 610 § 3, A.L. 1992 S.B. 519)

385.025. Credit life and accident insurance, form in which it shall be issued. - Credit life insurance and credit accident and sickness insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on a term plan;

(2) Individual policies of accident and sickness insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

(3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) Group policies of accident and sickness insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

(L. 1977 H.B. 610 § 4)

385.030. Amount of insurance permitted - payments, amount of, limited. - 1. The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.

2. Notwithstanding the provisions of subsection 1 of this section, insurance on agricultural credit transaction commitments, not exceeding forty-eight months in duration, may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

3. Notwithstanding any other provision of this section, insurance on educational credit transaction commitments may be written for the amount of the portion of the commitment that has not been advanced by the creditor.

4. The total amount of periodic indemnity payable by credit accident and sickness insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness, and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments or divided by the number of months of its term in the case of an agricultural loan commitment insured under subsection 2 of this section.

5. Notwithstanding any other provision of this section, insurance on residential real estate secured credit transaction commitments may be written up to the amount of the loan commitment.

(L. 1977 H.B. 610 § 5, A.L. 1987 H.B. 510, A.L. 1991 S.B. 352)

385.035. Term of policy, prepayment of debt, effect of. - The term of any credit life insurance or credit accident and sickness insurance, subject to acceptance by the insurer, shall commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than thirty days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of loan termination prior to scheduled maturity, all credit life and credit accident and sickness insurance shall be terminated and a refund shall be paid or credited as provided in section 385.050.

(L. 1977 H.B. 610 § 6)

385.040. Policy or group certificate, contents of, delivery required - policy or certificate not delivered, effect of. - 1. All credit life insurance and credit accident and sickness insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

2. Each individual policy or group certificate of credit life insurance, or credit accident and sickness insurance, or both, shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor separately for credit life insurance and credit accident and sickness insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

3. The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as hereinafter provided.

4. If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and sickness insurance, the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the

time the indebtedness is incurred. The copy of the application for or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that, upon acceptance by the insurer, the insurance shall become effective as provided in section 385.035.
(L. 1977 H.B. 610 § 7)

385.045. Filings required to be made with director - disapproval by director, effect of - rules, procedure. - 1. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state, and the schedules of premium rates pertaining thereto, shall be filed with the director prior to use.

2. The director shall within sixty days after the filing of the schedule of premium rates, policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders, disapprove any form if the benefits provided therein are not reasonable in relation to the premium charge in accordance with the provisions of section 385.070, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance code or of any rule or regulation promulgated thereunder. No rule or portion of a rule promulgated under the authority of sections 385.010 to 385.080 shall become effective unless it has been promulgated pursuant to the provisions of section 536.024. A premium rate or schedule of premium rates shall be deemed reasonable for all purposes under sections 385.010 to 385.080 if the rate or schedule produces or reasonably may be expected to result in claims incurred of not less than fifty percent of earned premium. To assist his decision, the director may extend the stipulated time up to an additional sixty days.

3. If the director notifies the insurer that the form is disapproved, it is unlawful for the insurer to issue or use the form. In the notice, the director shall specify the reason for his disapproval and state that a hearing will be granted within twenty days after receipt of request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement, or rider, shall be issued or used until the expiration of sixty days after it has been so filed, unless the director shall give his prior written approval thereto. The director may, at any time after a hearing held not less than twenty days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in subsection 2 of this section. The written notice of the hearing shall state the reason for the proposed withdrawal. It is unlawful for the insurer to issue such forms or use them after the effective date of the withdrawal.

4. If a group policy of credit life insurance or credit accident and sickness insurance has been delivered in this state before September 28, 1977, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in subsections 2 and 4 of section 385.040. Such forms shall be approved by the director if they conform with the requirements specified in said subsections and if the schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with the director; provided, however, the premium rate in effect on existing group policies may be continued until the first policy anniversary date following September 28, 1977. If a group policy has been or is delivered in another state insuring citizens of this state, the forms to be filed by the insurer with the director are the group certificates and notice of proposed insurance. He shall approve them only if:

(1) They provide the information that would be required if the group policy were delivered in this state;

(2) The applicable premium rates or charges do not exceed those approved by the director.

5. Any order or final determination of the director under the provisions of this section shall be subject to judicial review.
(L. 1977 H.B. 610 § 8, A.L. 1981 S.B. 200, A.L. 1995 S.B. 3)

385.050. Revision of premium schedules, procedure for - refunds paid, when - limit on charge for credit life. - 1. Any insurer may revise its schedules of premium rates from time to time and shall file the revised schedules with the director. No insurer shall issue any credit life insurance policy or credit accident and sickness insurance policy for which the premium rate exceeds that determined by the schedules of the insurer as then approved by the director.

2. Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance 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 actuarial method of calculating refunds which produces a refund equal to the original premium multiplied by the ratio of the sum of the remaining insured balances divided by the sum of the original insured balances. In determining the number of months for which a premium is earned, the first month's premium may be considered as earned on the first day of coverage and for all successive months' premiums, on the coverage anniversary date in each successive month.

3. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and sickness insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.

4. The amount charged to a debtor for any credit life or credit accident and sickness insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

5. Nothing in sections 385.010 to 385.080 shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

(L. 1977 H.B. 610 § 9, A.L. 2002 S.B. 895, A.L. 2008 H.B. 1893 merged with S.B. 1168)

385.055. Who may issue credit life insurance. - All policies and certificates of credit life insurance and credit accident and sickness insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business herein and shall be issued only through holders of licenses issued by the director. No person shall solicit, negotiate, or procure debtors to become insured under individual or group or any other form of policy unless such person is licensed as an agent, agency or broker by the director.

(L. 1977 H.B. 610 § 10)

385.060. Reporting and settlement of claims - who may adjust claims. - 1. All claims shall be promptly reported to the insurer or its designated claims representative, and the insurer shall maintain adequate claim files. All claims shall be settled promptly and in accordance with the terms of the insurance contract.

2. All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to one specified.

3. No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claims representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claims representative for the insurer in adjusting claims.

(L. 1977 H.B. 610 § 11)

385.065. Debtor to be informed of his option to use existing policies of insurance as security - policy may be obtained from any licensed insurer. - When life insurance or accident and sickness insurance is required or requested as additional security for any indebtedness, the debtor shall be informed of the option of furnishing the required amount of insurance, or any portion thereof, through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact such insurance business within this state.

(L. 1977 H.B. 610 § 12)

385.070. Rates presumed reasonable, when - criteria to be met - policy may be canceled, when - compensation to creditor for sale of coverage, maximum allowed. - 1. It shall be presumed in any review of rates filed with the director that the benefits are reasonable in relation to the premium charged if the premium rates do not exceed the following standard rates:

(1) Credit life insurance:

(a) The credit life insurance rates filed with the director shall be considered reasonable by the director if the single premium rate for single life decreasing term credit life insurance does not exceed fifty-five cents per annum per one hundred dollars of initial outstanding amount of insured indebtedness, and the single premium rate for single level term credit life insurance does not exceed a single premium rate of one dollar and ten cents per annum per one hundred dollars of initial outstanding amount of insured

indebtedness. If premiums or identifiable charges are paid monthly on outstanding balances, the monthly premiums shall be ninety-two cents per one thousand dollars of outstanding indebtedness;

(b) A single premium rate of ninety cents per annum per one hundred dollars of initial outstanding amount of insured indebtedness for joint life (two lives) decreasing term credit life insurance or a premium payable monthly at the rate of one dollar and thirty-eight cents per one thousand dollars of outstanding indebtedness insured on joint (two lives) level term credit life basis;

(c) A minimum premium of seventy-five cents shall be considered reasonable on any policy of credit life insurance. In the event any premium is unearned and to be returned to the insured, no returned premium calculated at less than one dollar need be refunded;

(d) The foregoing life insurance rates are presumed reasonable in relation to benefits only if the credit life insurance contract contains an incontestable clause which provides that an amount of insurance shall be contestable only for a period which shall not be in excess of two years and coverage is provided or offered to all debtors regardless of age, or to all debtors not older than the applicable age limit, which shall not be less than attained age seventy if the limit applies to the age when the insurance attaches, or not less than attained age seventy-one years if the limit applies to the age on the scheduled maturity date of the debt. Age limits, if used, must be clearly shown on the individual policies or group certificates;

(2) Credit accident and sickness insurance, per one hundred dollars of outstanding indebtedness:

(a)

No. of months in which indebtedness is repayable	NONRETROACTIVE BENEFITS			RETROACTIVE BENEFITS		
	7-day non-retro	14-day non-retro	30-day non-retro	7-day retro-active	14-day retro-active	30-day retro-active
1	$ .25	$ .12	$ .07	$ .42	$ .18	$ .14
6	1.50	.70	.40	2.50	1.10	.85
12	2.00	1.40	.80	3.00	2.20	1.70
18	2.50	1.80	1.20	3.50	2.60	2.10
24	3.00	2.20	1.60	4.00	3.00	2.50
36	4.00	3.00	2.40	5.00	3.80	3.30
48	5.00	3.50	2.90	6.00	4.30	3.80
60	6.00	3.90	3.30	7.00	4.70	4.20
72	7.00	4.30	3.70	8.00	5.10	4.60
84	8.00	4.70	4.10	9.00	5.50	5.00
96	9.00	5.10	4.50	10.00	5.90	5.40
108	10.00	5.50	4.90	11.00	6.30	5.80
120	11.00	5.90	5.30	12.00	6.70	6.20;

(b) Any rate not specified in this schedule shall be consistent with this schedule and shall be computed for the actual number of months in which the indebtedness is repayable. Premiums payable other than on a single premium basis or for benefits on a basis different than illustrated above shall be actuarially consistent with the above rates;

(c) No certificate fee, policy issue charge, or any charge other than the premium herein provided shall be made;

(d) The foregoing accident and sickness rates are presumed to produce reasonable benefits in relation to premiums only if all of the following exist:

a. Coverage is provided or offered to all debtors regardless of age or to all debtors not older than the applicable age limit, which shall not be less than the attained age of sixty-five if the limit applies to the age when the insurance attaches, or not less than the attained age of sixty-six if the limit applies to the age on the scheduled maturity date of the debt. Age limits, if used, must be clearly shown on the individual policies or group certificates;

b. Coverage does not contain any exclusions except disabilities resulting from intentional self-inflicted injury, pregnancy, foreign residence, flights in nonscheduled aircraft and pre-existing illness, disease or physical condition for which the debtor received or was professionally advised to obtain medical advice, consultations, or treatment during the six month period preceding the effective date of the debtor's coverage and which caused covered disability commencing within six months following the effective date of coverage;

c. The credit insurance policy contains a definition of **"disability"** which provides coverage during the initial twelve months of disability even though the insured is able to perform an occupation other than the one he held at the time disability occurred. After the initial twelve-month period, coverage must be provided if the insured is unable to perform the duties of any occupation for which he is suited by education, training or experience, except this paragraph shall not apply to lump sum disability coverage;

(3) Credit casualty insurance: a premium rate or schedule of premium rates shall be presumed to be reasonable if the rate or schedule of rates produces or may reasonably be expected to produce a prospective ratio of at least seventy-five percent derived by dividing the earned premium into the sum of the claims incurred plus the maximum allowable creditor compensation. Maximum allowable creditor compensation refers to creditor compensation authorized by subsection 2 of this section;

(4) Credit involuntary unemployment insurance:

(a) If the single premium rate does not exceed one dollar and thirty cents per annum per one hundred dollars of indebtedness;

(b) If the monthly outstanding balance rate does not exceed two dollars per month per thousand dollars of outstanding indebtedness;

(c) The foregoing involuntary unemployment insurance rates are presumed reasonable in relation to benefits only if all of the following exist:

a. Coverage is provided or offered to all debtors regardless of age who are working for salary, wages or other employment income for at least thirty hours per week and have done so for twelve consecutive months;

b. Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination by employer, unionized labor dispute, or lockout;

c. Coverage does not contain any exclusions except: debts with irregular monthly payments; voluntary forfeiture of salary, wages or other employment income; resignation; retirement; loss of income due to disability caused by accident, sickness, disease, or pregnancy, or loss of income due to termination as the result of willful misconduct, which is a transgression of some established and definite rule of conduct, a forbidden act, or a willful dereliction of duty, or criminal misconduct, which is unlawful behavior as determined by local, state or federal law;

(d) The debtor shall be provided with a copy of the credit involuntary unemployment, insurance policy or certificate of insurance, describing the debtor's rights, within thirty days of the extension of credit;

(e) Credit involuntary unemployment insurance shall be canceled upon the satisfaction or termination of the underlying indebtedness and, upon such cancellation, the debtor shall be entitled to a refund of the unearned premium by a formula approved by the director;

(f) Involuntary unemployment insurance may not exceed in amount the total amount of the indebtedness or exceed in duration the scheduled term of the underlying contract; however, the involuntary unemployment insurance plan of benefits may be for the full term of the underlying contract or for a limited number of months;

(5) Credit property insurance:

(a) If the monthly outstanding balance rate does not exceed one dollar and eighty-five cents per month per thousand dollars of outstanding indebtedness, or the single premium actuarial equivalent;

(b) The foregoing credit property insurance rates are presumed reasonable in relation to benefits only if the credit property insurance contract includes standard fire coverage, extended coverage endorsement and replacement cost provision endorsement, calculates benefits from the date of loss and provides primary coverage;

(c) The debtor shall be provided with a copy of the credit property insurance policy or certificate of insurance describing the debtor's rights within thirty days of the extension of credit;

(d) Whenever credit property insurance is sold by a creditor, the creditor shall retain a list of the personal property included in the instrument securing the credit transaction;

(e) If the debtor has or obtains additional personal property coverage, the debtor may retain such additional coverage or may substitute coverage at any time and, upon such substitution, shall be entitled to a refund of the unearned premium on the policy sold under sections 367.100 to 367.200, RSMo, by a formula approved by the director; where such insurance was not initially required by the creditor, the debtor may cancel at any time, without substituting and shall be entitled to a refund of any premium paid by a formula approved by the director. If such substitution or cancellation occurs within thirty days of the making of the loan or other credit transaction, the entire premium shall be refunded;

(f) Credit property insurance shall be canceled upon the satisfaction, or termination of the underlying indebtedness and, upon such cancellation, the debtor shall be entitled to a refund of the unearned premium by a formula approved by the director;

(g) If the creditor requires insurance coverage on the personal property securing the loan and other credit transaction, a homeowner's or renter's policy with replacement cost endorsement shall be considered as fulfilling this requirement;

(h) 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;

(i) If credit property insurance is sold by a creditor, the loan agreement or a separate written disclosure shall contain a written notice, in ten point type and reasonably designed to notify the debtor, in substantially the following form: YOU MAY NOT NEED TO PURCHASE CREDIT PROPERTY INSURANCE, AND YOU MAY HAVE OTHER INSURANCE WHICH THIS CREDITOR WILL ACCEPT WHICH COVERS THE PROPERTY SECURING THIS LOAN. YOU SHOULD EXAMINE ANY OTHER INSURANCE

WHICH YOU HAVE IN ORDER TO DETERMINE IF THIS COVERAGE IS NECESSARY;

(6) An insurer may receive approval of a different premium rate or schedule of premium rates to be used in connection with a particular policy form, or a class or classes of the debtors of a creditor, or under broadened coverage, if the insurer demonstrates to the satisfaction of the director that the loss experience which may reasonably be anticipated will develop a prospective ratio of at least seventy-five percent derived by dividing the standard rate basis earned premium into the sum of the claims incurred plus the maximum allowable creditor compensation. For individual deviations, the letter "P" in the formula in this subdivision shall mean premium earned adjusted to standard rates for the segment of business for which a deviation is requested. Maximum allowable creditor compensation refers to creditor compensation authorized by subsection 2 of this section. Such approval will be deemed to have been given by the director if he does not disapprove the rates or policy forms within thirty days from the date of filing. This may be accomplished as follows:

(a) Development of a life insurance rate based on the actual ages and amounts of insurance of those insured and based on the mortality and interest assumptions used for valuation, with evidence that the age distribution is representative of the composition of the group and can reasonably be expected to remain at the level so determined. If this method is used, the life insurance rate must be redetermined and refiled at the discretion of the director or at any time the policy provisions are changed in such manner as to affect the rate;

(b) When experience is available, the following method may be used in the development of credit life insurance rates, credit accident and sickness insurance rates, credit casualty insurance rates, credit involuntary unemployment insurance rates or credit property insurance rates under the following formula:

Let P = Premiums earned (at least three years)
D = Claims incurred (at least three years)
r = premium rate to be determined
s = standard premium for coverage

$$\text{Then } r = \frac{s}{.75} \times \frac{D+.4P}{P}$$

If this method is used, approval will not be given for a period longer than the credibility period utilized in the filing;

(c) The premiums described in subdivisions (1), (2), (3), (4) and (5) of this subsection may be revised by regulation by the director, based on the total Missouri credit insurance experience of all insurers not sooner than December 31, 1992, and for any three-year period thereafter, but no more frequently than once every three years; except that any such revision is based on the above formula; however, once the director elects to revise premiums, he shall recalculate the premiums by use of the formula without discretion;

(d) If a company proposes to write any type of coverage other than those described herein, it may request a public hearing to determine, through credible statistics, the initial rate to be employed, except that no hearing will be required to establish the need for lump sum disability benefits;

(e) If, after study and hearing, the director determines that the premiums described in subdivisions (1), (2), (3), (4) and (5) of this subsection do not accomplish the purposes of this section, he may prescribe by regulation that all rates be calculated in conformity with the methods described in this subdivision, except that the director shall not so prescribe sooner than December 31, 1992; however, once the director elects to revise premiums, he shall recalculate the premiums by use of the formula without discretion;

(f) Any debtor may cancel credit insurance within fifteen days of its purchase and shall receive a complete refund or credit of premium. This right shall be set forth in the policy or the certificate, 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. This right is in addition to, and separate from, the right to cancel credit property insurance.

2. No insurer shall pay any compensation to any creditor for the sale of any policy, certificate, or other contract of credit insurance which exceeds forty percent of the rates specified in this section or subsequently established by the director. This schedule of maximum authorized compensation shall apply regardless of any deviation in rates filed or approved by the director. **"Compensation"** as used herein includes but is not limited to:

(1) Commissions, retrospective rate credits, service fees, expense allowances or reimbursements, gifts, furnishing equipment, facilities, goods or services, or any other form of remuneration resulting directly from the sale of credit insurance;

(2) All commissions paid or allowed to any agent directly or indirectly connected with the creditor. Notwithstanding, an insurer may compensate independent general agents, not affiliated directly or indirectly with the creditor by paying commissions or compensation, but no

such commissions or compensation shall exceed ten percent of the rates specified in this section in addition to the agent's commission or compensation. Such independent general agent may not pass on any portion of such compensation to creditors or other agents or brokers;

(3) All compensation of any kind, direct or indirect, paid or allowed to the creditor;

(4) All benefits such as items of merchandise, travel, conventions, vacations, rewards, bonuses, trading stamps, scrip, or other rewards of any kind given, paid or allowed to the creditor as an inducement or payment for sales made or volume of sales obtained;

(5) Allowing the creditor to have the use of premiums collected by the creditor by leaving said funds on deposit with the creditor for undue periods of time at low or no interest rate. An insurance company may invest in certificates of deposit with financial institutions which are the purveyors of its credit insurance if the interest paid on such certificates of deposit is at least equal to that being paid by the financial institution on certificates of deposit to other investors on the open market; provided further, that the total amount of such certificates of deposit shall not exceed the annual gross premium written. Premiums received by a creditor or an agent must be actually remitted to and received by the insurance company within forty-five days after the sale of the insurance. In no event shall compensation be deemed to include reinsurance premiums paid to, or underwriting profits generated by, an insurer or reinsurer whether or not such insurer or reinsurer is affiliated with the creditor or agent.

(L. 1977 H.B. 610 § 13, A.L. 1983 S.B. 107, A.L. 1991 H.B. 385, et al. and H.B. 575, A.L. 1992 S.B. 519)

CROSS REFERENCE

Joint committee for interim study of medical malpractice laws, appointment, report, RSMo 373.041.

385.075. Regulatory powers of director. - The director may, after notice and hearing, pursuant to section 374.045, RSMo, issue the rules and regulations that he deems necessary to effectuate the purposes of sections 385.010 to 385.080, or to eliminate devices or plans designed to avoid or render ineffective the provisions of sections 385.010 to 385.080. The director may require such information as is reasonably necessary for the enforcement of sections 385.010 to 385.080.

(L. 1977 H.B. 610 § 14)

385.080. Credit life, accident and health insurance must be placed directly in companies holding a certificate of authority to do business in this state. - Credit life and credit accident and health insurance may be written or issued in Missouri only when placed directly in insurance companies duly granted certificate of authority to do such business in this state.

(L. 1977 H.B. 610 § 15)

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CHAPTER 400

UNIFORM COMMERCIAL CODE

ARTICLE 9. SECURED TRANSACTIONS
Part 6. Defaults

CROSS REFERENCES

Mortgage or deed of trust securing payment of bonds issued by interstate gas pipeline company or public utility, filing in office of secretary of state, 443.451

Public utility, gas pipeline company, mortgage or deed of trust securing payment of bonds, filing in office of secretary of state, 443.451

Uniform electronic transactions act, 432.200 to 432.295

400.9-602. Waiver of variance of rights and duties. - Except as otherwise provided in section 400.9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Section 400.9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 400.9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 400.9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 400.9-608(a) and 400.9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 400.9-608(a) and 400.9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 400.9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 400.9-610(b), 400.9-611, 400.9-613 and 400.9-614, which deal with disposition of collateral;

(8) Section 400.9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 400.9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 400.9-620, 400.9-621 and 400.9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 400.9-623, which deals with redemption of collateral;

(12) Section 400.9-624, which deals with permissible waivers; and

(13) Sections 400.9-625 and 400.9-626, which deal with the secured party's liability for failure to comply with this article.

(L. 2001 S.B. 288, A.L. 2002 S.B. 895)

400.9-609. Secured party's right to take possession after default. - (a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 400.9-610.

(b) A secured party may proceed under subsection (a):

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(L. 2001 S.B. 288)

400.9-610. Disposition of collateral after default. - (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

(L. 2001 S.B. 288)

400.9-611. Notification before disposition of collateral. - (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 400.9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 400.9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

(L. 2001 S.B. 288, A.L. 2002 S.B. 895)

400.9-614. Contents and form of notification before disposition of collateral: consumer goods transaction. - In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in section 400.9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 400.9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available;

(2) A particular phrasing of the notification is not required;

(3) The following form of notification, when completed, provides sufficient information:

(Name and address of secured party)
(Date)
NOTICE OF OUR PLAN TO SELL PROPERTY
(Name and address of any obligor who is also a debtor) Subject: (Identification of Transaction) We have your (describe collateral), because you broke promises in our agreement.

(For a public disposition:)
We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place: You may attend the sale and bring bidders if you want.

(For a private disposition:)
We will sell (describe collateral) at private sale sometime after(date). A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (telephone number).

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (telephone number) (or write us at (secured party's address)) and request a written explanation. (We will charge you $ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.)

If you need more information about the sale call us at (telephone number) (or write us at (secured party's address)).

We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

(End of Form)

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form;

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article;

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).
(L. 2001 S.B. 288)

400.9-616. Explanation of calculation of surplus or deficiency. - (a) In this section:

(1) **"Explanation"** means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) **"Request"** means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under section 400.9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 400.9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.
(L. 2001 S.B. 288)

400.9-623. Right to redeem collateral. - (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in section 400.9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under section 400.9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under section 400.9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 400.9-622.
(L. 2001 S.B. 288)

400.9-624. Waiver. - (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 400.9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under section 400.9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 400.9-623 only by an agreement to that effect entered into and authenticated after default.
(L. 2001 S.B. 288)

400.9-627. Determination of whether conduct was commercially reasonable. - (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

(L. 2001 S.B. 288)

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CHAPTER 407

MERCHANDISING PRACTICES

407.200. Unsolicited merchandise, how disposed of. - Where unsolicited merchandise is delivered to a person for whom it is intended, such person has a right to refuse to accept delivery of this merchandise or he may deem it to be a gift and use it or dispose of it in any manner without any obligation to the sender.
(L. 1969 S.B. 20 § 1)

CREDIT SERVICE ORGANIZATIONS

407.635. Definitions. - As used in sections 407.635 to 407.644, the following words and phrases shall mean:

(1) **"Buyer"**, an individual who is solicited to purchase or who purchases the services of a credit services organization;

(2) **"Consumer reporting agency"** has the meaning assigned by section 603(f) of the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f);

(3) **"Extension of credit"**, the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal family or household purposes.
(L. 1991 S.B. 112 § 1)

407.637. Credit service organization - exemptions. - 1. A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides or represents that the person can or will provide any of the following services:

(1) Improving the buyer's credit record, history or rating;

(2) Obtaining an extension of credit for a buyer; or

(3) Providing advice or assistance to a buyer with regard to subdivision (1) or (2) of this subsection.

2. The following are exempt from the provisions of sections 407.635 to 407.644:

(1) A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the federal National Housing Act, 12 U.S.C. Section 1701, et seq.;

(2) A bank or savings and loan association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation, or a subsidiary of such a bank or savings and loan association;

(3) A credit union doing business in this state;

(4) A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code;

(5) A person licensed as a real estate broker or salesperson pursuant to chapter 339, RSMo, acting within the course and scope of that license;

(6) A person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(7) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;

(8) A consumer reporting agency; and

(9) A person whose primary business is making loans secured by liens on real property;

(10) A person who is licensed as a certified public accountant pursuant to chapter 326, RSMo, acting within the course and scope of that license; or an individual who is enrolled to practice before the Internal Revenue Service; or an accountant, who is accredited by the Accreditation Council for Accountancy.

(L. 1991 S.B. 112 § 2)

407.638. Prohibited activities. - A credit services organization, a salesperson, agent or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with section 407.639 a surety bond in the amount required by subsection 4 of section 407.639, issued by a surety company authorized to do business in this state, or has established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required by subsection 5 of section 407.639 is held in trust as required by section 407.639;

(2) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

(3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

(a) Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

(b) Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

(4) Engage, directly or indirectly, in a fraudulent or deceptive act, practice or course of business in connection with the offer or sale of the services of a credit services organization;

(5) Make, or advise a buyer to make, a statement with respect to a buyer's credit worthiness, credit standing or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the director of finance, unless otherwise provided by this chapter.

(L. 1991 S.B. 112 § 3)

407.639. Copy of bond to be filed with director of finance - purpose of bond - amount of bond - statement by director of finance. - 1. This section applies to a credit services organization required by subdivision (1) of section 407.638 to obtain a surety bond or establish a surety account.

2. If a bond is obtained, a copy of it shall be filed with the director of finance. If a surety account is established, notification of the depository, the trustee and the account number shall be filed with the director of finance.

3. The bond or surety account required shall be in favor of the state for the benefit of any person who is damaged by any violation of sections 407.635 to 407.644. The bond or surety account shall also be in favor of any person damaged by such a violation.

4. Any person claiming against the bond or surety account for a violation of sections 407.635 to 407.644 may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under subdivision (1) of subsection 1 of section 407.644 and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter may not exceed the amount of the surety account or bond.

5. The bond or the surety account shall be in the amount of ten thousand dollars.

6. A depository holding money in a surety account under sections 407.635 to 407.644 shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services

organization or representative presents a statement issued by the director of finance indicating that section 407.640* has been satisfied in relation to the credit services organization. The director of finance may conduct investigations and require submission of information as is necessary to enforce this section.

7. The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

(L. 1991 S.B. 112 § 4)

*Revisor's note: Words "subsection 6 of section 5" appear in original rolls. Section 5 was codified as section 407.460 by the Revisor, but did not contain a subsection 6.

407.640. Registration statements, filing, contents, fee. - 1. A credit services organization shall file a registration statement with the director of finance before conducting business in this state. The registration statement must contain:

(1) The name and address of the credit services organization; and

(2) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

2. The registration statement must also contain either:

(1) A full and complete disclosure of any litigation or unresolved complaint filed by or with a governmental authority of this state relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed by or with a governmental authority of this state relating to the operation of the credit services organization.

3. The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

4. Each credit services organization registering under this section shall maintain a copy of the registration statement in the office of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

5. The director of finance may charge each credit services organization that files a registration statement with the director of finance a reasonable fee not to exceed three hundred dollars to cover the cost of filing. The director of finance may not require a credit services organization to provide information other than that provided in the registration statement as part of the registration process.

(L. 1991 S.B. 112 § 5, A.L. 2015 H.B. 587 merged with S.B. 345)

407.641. Contract, writing, contents. - 1. Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) A statement explaining the buyer's right to proceed against the bond or surety account required by subdivision (1) of section 407.638;

(3) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account;

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq.;

(5) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;

(6) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) A complete and accurate statement of when consumer information becomes obsolete and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

2. The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

(L. 1991 S.B. 112 § 6)

407.642. Contract requirements, cancellation clause. - 1. Each contract between the buyer and a credit services organization for the purchase of the services of the credit services

organization must be in writing, dated, signed by the buyer and must include:

(1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows:

"YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT";

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated length of time, not to exceed one hundred eighty days, for performing the services; and

(4) The address of the credit services organization's principal place of business and the name and address of its registered agent in the state authorized to receive service of process.

2. The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"NOTICE OF CANCELLATION

YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE DAYS AFTER THE DATE THE CONTRACT IS SIGNED. IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THIS CONTRACT WILL BE RETURNED WITHIN TEN DAYS AFTER THE DATE OF RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE. TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED DATED COPY OF THIS CANCELLATION NOTICE, OR OTHER WRITTEN NOTICE TO:

(NAME OF SELLER) AT (ADDRESS OF SELLER) (PLACE OF BUSINESS) NOT LATER THAN MIDNIGHT (DATE). I HEREBY CANCEL THIS TRANSACTION.

DATE: _____

BUYER'S SIGNATURE: _____ "

3. The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

4. The breach by a credit services organization of a contract under this section, or of any obligation arising from a contract under this section, is a violation of sections 407.635 to 407.644.

(L. 1991 S.B. 112 § 7)

407.643. Waiver of buyer's rights void. - 1. A credit services organization may not attempt to cause a buyer to waive a right under sections 407.635 to 407.644.

2. A waiver by a buyer of any part of sections 407.635 to 407.644 is void.

(L. 1991 S.B. 112 § 8)

407.644. Actions - damages - penalties. - 1. (1) A buyer injured by a violation of sections 407.635 to 407.644 may bring an action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

(2) The buyer may also be awarded punitive damages.

2. The attorney general or a buyer may bring an action in a court of competent jurisdiction to enjoin a violation of sections 407.635 to 407.644.

3. A violation of sections 407.635 to 407.644 is an unlawful practice pursuant to sections 407.010 to 407.130, and the violator shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130.

4. An action may not be brought under subsection 1 or 3 of this section after four years after the date of the execution of the contract for services to which the action relates.

5. A person who violates any provision of sections 407.635 to 407.644 is guilty of a class B misdemeanor.

6. In an action under this section the burden of proving an exemption under section 407.637 is on the person claiming the exemption.

7. The remedies provided by sections 407.635 to 407.644 are in addition to other remedies provided by law.

(L. 1991 S.B. 112 §§ 9 to 15)

CREDIT CARD PROCESSING SERVICES

407.1400. Processing services agreements, required disclosures - inapplicability, when. - 1. Any person or entity that offers a credit card processing service in this state shall disclose the following information on any contract or agreement to render a credit card processing service:

(1) The effective date of the contract;

(2) The term of the contract;

(3) The amount of any monthly minimum fee or charge for the credit card processing service; and

(4) The amount of any fee or charge for terminating the contract or agreement.

2. The disclosures required in subsection 1 of this section and any other terms and conditions pertaining to the use of the credit card processing service shall be printed in eight-point font at a minimum.

3. Nothing in this section shall limit the rights or remedies that are otherwise available to a person or an entity that has contracted with a credit card processing service.

4. The obligations of this section are cumulative and do not limit the obligations imposed under any other state or federal law.

5. The provisions of this section shall not apply to:

(1) A state bank or a state savings association that offers a credit card processing service or is a party to a contract that offers a credit card processing service; or

(2) A national bank or a national savings association that offers a credit card processing service or a party to a contract that offers a credit card processing service in connection with a national bank or national savings association; or

(3) The parent, affiliate, or subsidiary of any bank or savings association that offers a credit card processing service; or

(4) A credit union that offers a credit card processing service or is a party to a contract that offers a credit card processing service; or

(5) The parent, affiliate, or subsidiary of any credit union that offers a credit card processing service; or

(6) A trade or business organization or association that offers a credit card processing service or is a party to a contract that offers a credit card processing service.

6. The provisions of this section shall only apply to new contracts entered into after August 28, 2014.

(L. 2014 H.B. 1270)

407.1500. Definitions - notice to consumer for breach of security, procedure - attorney general may bring action for damages. - 1. As used in this section, the following terms mean:

(1) **"Breach of security"** or **"breach"**, unauthorized access to and unauthorized acquisition of personal information maintained in computerized form by a person that compromises the security, confidentiality, or integrity of the personal information. Good faith acquisition of personal information by a person or that person's employee or agent for a legitimate purpose of that person is not a breach of security, provided that the personal information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality, or integrity of the personal information;

(2) **"Consumer"**, an individual who is a resident of this state;

(3) **"Consumer reporting agency"**, the same as defined by the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a;

(4) **"Encryption"**, the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key;

(5) **"Health insurance information"**, an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual;

(6) **"Medical information"**, any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional;

(7) **"Owns or licenses"** includes, but is not limited to, personal information that a business retains as part of the internal customer account of the business or for the purpose of using the information in transactions with the person to whom the information relates;

(8) **"Person"**, any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation, or any other legal or commercial entity;

(9) **"Personal information"**, an individual's first name or first initial and last name in combination with any one or more of the following data elements that relate to the individual if any of the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the

name or data elements are unreadable or unusable:

(a) Social Security number;

(b) Driver's license number or other unique identification number created or collected by a government body;

(c) Financial account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account;

(d) Unique electronic identifier or routing code, in combination with any required security code, access code, or password that would permit access to an individual's financial account;

(e) Medical information; or

(f) Health insurance information.

"Personal information" does not include information that is lawfully obtained from publicly available sources, or from federal, state, or local government records lawfully made available to the general public;

(10) **"Redacted"**, altered or truncated such that no more than five digits of a Social Security number or the last four digits of a driver's license number, state identification card number, or account number is accessible as part of the personal information.

2. (1) Any person that owns or licenses personal information of residents of Missouri or any person that conducts business in Missouri that owns or licenses personal information in any form of a resident of Missouri shall provide notice to the affected consumer that there has been a breach of security following discovery or notification of the breach. The disclosure notification shall be:

(a) Made without unreasonable delay;

(b) Consistent with the legitimate needs of law enforcement, as provided in this section; and

(c) Consistent with any measures necessary to determine sufficient contact information and to determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any person that maintains or possesses records or data containing personal information of residents of Missouri that the person does not own or license, or any person that conducts business in Missouri that maintains or possesses records or data containing personal information of a resident of Missouri that the person does not own or license, shall notify the owner or licensee of the information of any breach of security immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in this section.

(3) The notice required by this section may be delayed if a law enforcement agency informs the person that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request by law enforcement is made in writing or the person documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the person its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(4) The notice shall at minimum include a description of the following:

(a) The incident in general terms;

(b) The type of personal information that was obtained as a result of the breach of security;

(c) A telephone number that the affected consumer may call for further information and assistance, if one exists;

(d) Contact information for consumer reporting agencies;

(e) Advice that directs the affected consumer to remain vigilant by reviewing account statements and monitoring free credit reports.

(5) Notwithstanding subdivisions (1) and (2) of this subsection, notification is not required if, after an appropriate investigation by the person or after consultation with the relevant federal, state, or local agencies responsible for law enforcement, the person determines that a risk of identity theft or other fraud to any consumer is not reasonably likely to occur as a result of the breach. Such a determination shall be documented in writing and the documentation shall be maintained for five years.

(6) For purposes of this section, notice to affected consumers shall be provided by one of the following methods:

(a) Written notice;

(b) Electronic notice for those consumers for whom the person has a valid email address and who have agreed to receive communications electronically, if the notice provided is consistent with the provisions of 15 U.S.C. Section 7001 regarding electronic records and signatures for notices legally required to be in writing;

(c) Telephonic notice, if such contact is made directly with the affected consumers; or

(d) Substitute notice, if:

a. The person demonstrates that the cost of providing notice would exceed one hundred thousand dollars; or

b. The class of affected consumers to be notified exceeds one hundred fifty thousand; or

c. The person does not have sufficient contact information or consent to satisfy paragraphs (a), (b), or (c) of this subdivision, for only those affected consumers without sufficient contact information or consent; or

d. The person is unable to identify particular affected consumers, for only those unidentifiable consumers.

(7) Substitute notice under paragraph (d) of subdivision (6) of this subsection shall consist of all the following:

(a) Email notice when the person has an electronic mail address for the affected consumer;

(b) Conspicuous posting of the notice or a link to the notice on the internet website of the person if the person maintains an internet website; and

(c) Notification to major statewide media.

(8) In the event a person provides notice to more than one thousand consumers at one time pursuant to this section, the person shall notify, without unreasonable delay, the attorney general's office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. Section 1681a(p), of the timing, distribution, and content of the notice.

3. (1) A person that maintains its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of this section, is deemed to be in compliance with the notice requirements of this section if the person notifies affected consumers in accordance with its policies in the event of a breach of security of the system.

(2) A person that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with this section if the person notifies affected consumers in accordance with the maintained procedures when a breach occurs.

(3) A financial institution that is:

(a) Subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Customer Information and Customer Notice, issued on March 29, 2005, by the board of governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance; or

(b) Subject to and in compliance with the National Credit Union Administration regulations in 12 CFR Part 748; or

(c) Subject to and in compliance with the provisions of Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. Sections 6801 to 6809;

shall be deemed to be in compliance with this section.

4. The attorney general shall have exclusive authority to bring an action to obtain actual damages for a willful and knowing violation of this section and may seek a civil penalty not to exceed one hundred fifty thousand dollars per breach of the security of the system or series of breaches of a similar nature that are discovered in a single investigation.

(L. 2009 H.B. 62)

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CHAPTER 408

LEGAL TENDER AND INTEREST

LEGAL TENDER

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LEGAL TENDER

408.010. Silver a legal tender. - The silver coins of the United States are hereby declared a legal tender, at their par value, fixed by the laws of the United States, and shall be receivable in payment of all debts, public or private, hereafter contracted in the state of Missouri; provided, however, that no person shall have the right to pay, upon any one debt, dimes and half dimes to an amount exceeding ten dollars, or of twenty and twenty-five cent pieces exceeding twenty dollars.
(RSMo 1939 § 3359)
Prior revisions: 1929 § 2972; 1919 § 7100; 1909 § 8099

INTEREST

408.015. Definitions. - As used in sections 408.020 to 408.562:

(1) **"Bank"** shall mean bank, trust company, or bank and trust company;

(2) **"Business loan"** shall mean a loan to an individual or a group of individuals, the proceeds of which are to be used in a business or for the purpose of acquiring an interest in a business. The term shall also include a loan to a trust, estate, cooperative, association, or limited or general partnership;

(3) **"Corporation"** shall mean any corporation, whether for profit or not for profit, and including any urban redevelopment corporation;

(4) **"Lender"** shall include any bank, savings and loan association, credit union, corporation, partnership, or any other person or entity who makes loans or extends credit;

(5) **"Monthly Index of Long Term United States Government Bond Yields"** shall mean the monthly unweighted average yield for all outstanding United States Treasury bonds neither due nor callable in less than ten years, based on the daily closing bid prices in the over the counter market, as determined by the Board of Governors of the Federal Reserve System, published in the Federal Reserve Bulletin, and expressed in terms of percent per annum;

(6) **"Residential real estate"** shall mean any real estate used or intended to be used as a residence by not more than four families, one of whom is the borrower, including a manufactured home as defined in section 700.010, which is real estate as defined in subsection 7 of section 442.015;

(7) **"Residential real estate loan"** shall mean a loan made for the acquisition, construction, repair, or improvement of, or secured by, residential real estate. The term shall also include any loan made to refinance such a loan. No loan secured by residential real estate shall be considered to be a business loan unless such loan meets the requirements of subdivision (2) of this section and subdivision (2) of section 408.035.

(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305, A.L. 1982 H.B. 1341, et al., A.L. 2010 S.B. 630)

408.020. When no rate of interest is agreed upon, nine percent allowed as legal interest. - Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made.

(RSMo 1939 § 3226, A.L. 1979 S.B. 305)
Prior revisions: 1929 § 2839; 1919 § 6491; 1909 § 7179

(1952) Where assignee of life insurance policies paid premiums thereon, but did not surrender same for their cash value so as to cause them to become due and payable, they became due and payable upon the death of insured, so that interest or right to reimbursement for premiums under this statute did not accrue prior to such death. Boyle v. Crimm, 363 Mo. 731, 253 S.W.2d 149.

(1955) Demand for real estate broker's commission is unnecessary to start running of interest where such commission becomes due under contract. Doerflinger Realty Co. v. Fields (A.), 281 S.W.2d 609.

(1958) In absence of demand for payment of unwritten account, the filing of suit substitutes therefor and the interest bearing period starts as of the date of the verdict. The verdict need not separately state the amount of interest allowed and error in amount allowed may be cured by remittitur. Weekley v. Wallace (A.), 314 S.W.2d 256.

(1960) Where water district bonds contained no provision for the payment of interest after maturity, the statutory interest rate applied after demand was made. State ex rel. Stern Bros. & Co. v. Stilley (Mo.), 337 S.W.2d 934.

(1961) Where laborer filed a claim against contractor on his bond but the evidence did not show that he ever made a demand for payment against the principal in the bond, the bonding company would not be liable for any interest until such time as demand was made and therefore in this case the allowance of interest was improper. Phoenix Assurance Co. of New York v. Appleton City, 296 F.2d 787.

(1962) In action to recover balance due on subcontract for covering subgrade with topsoil, the fact that parties honestly disagreed as to amount of fill provided under subcontract did not make the sum due thereunder unascertainable and court did not err in allowing interest thereon from date of acceptance of the work. Eastmount Const. Co. v. Transport Mfg. & Equip. Co., 301 F.2d 34.

(1964) A promissory note which provides when the indebtedness evidenced thereby becomes due and payable is a written agreement within the meaning of this section and a demand of payment is not necessary to start the accrual of interest under the statute. Sebree v. Rosen (Mo.), 374 S.W.2d 132.

(1966) Court did not err in directing jury to award interest if they found for plaintiff, instead of only permitting it to do so. Schultz v. Queen Insurance Co. (A.), 399 S.W.2d 230.

(1974) Held that amount due was readily ascertainable and interest from original demand was part of measure of damages even though the sum originally demanded was far in excess of the sum finally stipulated as owing. Slay Warehousing Co., Inc. v. Reliance Insurance Co. (C.A. Mo.), 489 F.2d 214.

(1985) Issue of prejudgment interest and all the facts necessary for an award must appear in the petitions. Folk v. Countryside Casualty Co. (Mo. App.), 686 S.W.2d 882.

(1986) Prejudgment interest is not available for breach of a contract where damages are based upon lost profits. Universal Power Systems v. Godfather Pizza, 818 F.2d 667 (8th Cir. 1987).

(1987) Where amount of debt was disputed and where one party claimed that other party was estopped from claiming true debt, amount was not liquidated or readily ascertainable by reference to recognized legal standards as required by this section. Total Petroleum, Inc. v. Davis, 822 F.2d 734 (8th Cir. 1987).

(2003) Insured's claim for uninsured motorist benefits is unliquidated and not subject to prejudgment interest. McKinney v. State Farm Mutual Insurance, 123 S.W.3d 242 (Mo.App. W.D.).

408.030. Interest, maximum rate allowed - penalty for overcharge, limitation on action for - "market rate" to be determined, when, how - discounting to financial organizations authorized. - 1. Parties may agree, in writing to a rate of interest not exceeding ten percent per annum on money due or to become due upon any contract, including a contract for commitment; except that, when the "market rate" exceeds ten percent per annum,

parties may agree, in writing, to a rate of interest not exceeding the "market rate". A contract for commitment to lend money shall not exceed the maximum lawful rate in effect on the date of such contract. A loan entered into pursuant to a valid contract for commitment shall not exceed the maximum lawful rate in effect on the date of such commitment. The "market rate" for any calendar quarter shall be equal to the monthly index of long term United States government bond yields for the second preceding calendar month prior to the beginning of the calendar quarter plus an additional three percentage points rounded off to the nearest tenth of one percent. Calendar quarters begin on January first, April first, July first, and October first.

2. If a rate of interest greater than permitted by law is paid, the person paying the same or his legal representative may recover twice the amount of the interest thus paid, provided that the action is brought within five years from the time when said interest should have been paid. The person so adjudged to have received a greater rate of interest shall also be liable for the costs of the suit, including a reasonable attorney's fee to be determined by the court.

3. On or before the twentieth day of the last month of each calendar quarter the director of the division of finance shall determine the monthly index of long term United States government bond yields for the second month of that quarter and shall determine the market rate of the next succeeding quarter. The director of the division of finance shall cause such market rate to be posted pursuant to section 361.110, RSMo, and to be published in appropriate publications; such market rate to be effective on the first day of the next succeeding calendar quarter.

4. Any bank, trust company or savings and loan association may purchase any note, bill of exchange, or other evidence of debt, payable in installments or otherwise, regardless of where payable, at a price that may be agreed upon.

(RSMo 1939 § 3227, A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305)

Prior revisions: 1929 § 2840; 1919 § 6492; 1909 § 7180

(1960) Equipment was purchased and chattel mortgage given therefor which recited that the time price of the equipment was a specific amount, and stated that the purchaser would pay to the order of the creditor in thirty-six monthly installments the total amount of the time price, the transaction was not usurious notwithstanding the difference between the cash price and the time price was considerably in excess of the 8% interest allowed by statute. Wyatt v. Commercial Credit Corp. (A.), 341 S.W.2d 348.

408.031. Fee in lieu of interest may be charged on loan - exception. - 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.

(L. 1977 S.B. 420 § 2, A.L. 1979 S.B. 305)

408.032. Recording fees. - 1. Notwithstanding any provisions of law to the contrary, the recording fees, including actual fees paid to a third party by a creditor, may include the following:

(1) Any fee paid in processing the debtor's liens as provided in section 136.055, RSMo;

(2) Any fee paid to a third party for expediting the debtor's motor vehicle or other title or lien with the department of revenue, provided:

(a) The creditor does not control the third party; and

(b) Both creditor and third party do not share common ownership.

2. Either fee provided for in subdivisions (1) and (2) of subsection 1 of this section may be charged such debtor, and is not included as interest or service charges for the purposes of state usury laws; except that the expeditor fee as provided in subdivision (2) of subsection 1 of this section may not exceed fifteen dollars.

(L. 1997 H.B. 257, A.L. 2004 H.B. 959)

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

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

(2) Extension of credit primarily for agricultural, business, or commercial purposes;

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

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

(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1992 S.B. 688, A.L. 1997 H.B. 655 merged with S.B. 170, A.L. 2021 S.B. 106)

(1994) Where statute allows unlimited interest on loans in excess of five thousand dollars secured by real estate used for agricultural activity, banking regulation, C.S.R. 140-6.050, relating to contingent interest and limitations on its application to profitability and successful operations of businesses, is not inconsistent and statute does not entitle bank to ignore limitation of banking regulation. Contingent interest provision of bank note was invalid and unenforceable. Killion v. Bank Midwest, N.A., 886 S.W.2d 29 (Mo. App. W.D.).

408.036. Prepayment penalty by lender prohibited, exception - maximum permitted, exceptions - return of moneys above maximum permitted. - Notwithstanding any other provision of this chapter to the contrary, no prepayment penalty shall be charged or exacted by a lender on any promissory note or other evidence of debt secured by residential real estate when the full principal balance thereof is paid after five years from the origination date and prior to maturity; and in no event shall any prepayment penalty exceed two percent of the balance at the time of prepayment, except for, when an existing mortgage loan is replaced with a new mortgage loan made by another lender and the proceeds from the new loan are used to either pay down or reduce the balance to a smaller amount before paying in full and in order to avoid or reduce the prepayment penalty. In such an occurrence the prepayment penalty shall not be more than two percent of the average daily balance for the prior six months, provided that the 1990 and 1992 reenactment of this section shall not be construed to be action taken in accordance with Public Law 96.221, Section 501(b)(4). Any fees received in excess of those permitted pursuant to this section shall be returned to the person from whom received upon demand. Business and corporate loans are not subject to the provisions of this section.

(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305, A.L. 1990 H.B. 1125, A.L. 1992 S.B. 688, A.L. 1998 H.B. 1189)

408.040. Interest on judgments, how regulated - prejudgment interest allowed when, procedure. - 1. Judgments shall accrue interest on the judgment balance as set forth in this section. The **"judgment balance"** is defined as the total amount of the judgment awarded on the day judgment is entered including, but not limited to, principal, prejudgment interest, and all costs and fees. Postjudgment payments or credits shall be applied first to postjudgment costs, then to postjudgment interest, and then to the judgment balance.

2. In all nontort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until satisfaction be made by payment, accord or sale of property; all such judgments and orders for money upon contracts bearing more than nine percent interest shall bear the same interest borne by such contracts, and all other judgments and orders for money shall bear nine percent per annum until satisfaction made as aforesaid.

3. Notwithstanding the provisions of subsection 2 of this section, in tort actions, interest shall be allowed on all money due upon any judgment or order of any court from the date judgment is entered by the trial court until full satisfaction. All such judgments and orders for money shall bear a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus five percent, until full satisfaction is made. The judgment shall state the applicable interest rate, which shall not vary once entered. In tort actions, if a claimant has made a demand for payment of a claim or an offer of settlement of a claim, to the party, parties or their representatives, and to such party's liability insurer if known to the claimant, and the amount of the judgment or order exceeds the demand for payment or offer of settlement, then prejudgment interest shall be awarded, calculated from a date ninety days after the demand or offer was received, as shown by the certified mail return receipt, or from the date the demand or offer was rejected without counter offer, whichever is earlier. In order to qualify as a demand or offer pursuant to this section, such demand must:

(1) Be in writing and sent by certified mail return receipt requested; and

(2) Be accompanied by an affidavit of the claimant describing the nature of the claim, the nature of any injuries claimed and a general computation of any category of damages sought by the claimant with supporting documentation, if any is reasonably available; and

(3) For wrongful death, personal injury, and bodily injury claims, be accompanied by a list of the names and addresses of medical providers who have provided treatment to the claimant or decedent for such injuries, copies of all reasonably available medical bills, a list of employers if the claimant is seeking damages for loss of wages or earning, and written authorizations sufficient to allow the party, its representatives, and liability insurer if known to the claimant to obtain records from all employers and medical care providers; and

(4) Reference this section and be left open for ninety days.

Unless the parties agree in writing to a longer period of time, if the claimant fails to file a cause of action in circuit court prior to a date one hundred twenty days after the demand or offer was received, then the court shall not award prejudgment interest to the claimant. If the claimant is a minor or incompetent or deceased, the affidavit may be signed by any person who reasonably appears to be qualified to act as next friend or conservator or personal representative. If the claim is one for wrongful death, the affidavit may be signed by any person qualified pursuant to section 537.080 to make claim for the death. Nothing contained herein shall limit the right of a claimant, in actions other than tort actions, to recover prejudgment interest as otherwise provided by law or contract.

4. In tort actions, a judgment for prejudgment interest awarded pursuant to this section should bear interest at a per annum interest rate equal to the intended Federal Funds Rate, as established by the Federal Reserve Board, plus three percent. The judgment shall state the applicable interest rate, which shall not vary once entered.

(RSMo 1939 § 3228, A.L. 1979 H.B. 85, A.L. 1987 H.B. 700, A.L. 2005 H.B. 393, A.L. 2014 H.B. 1231 merged with S.B. 621 merged with S.B. 672)

Prior revisions: 1929 § 2841; 1919 § 6493; 1909 § 7181

CROSS REFERENCES

Applicability of statute changes to cases filed after August 28, 2005, RSMo 538.305

Interest as part of damages in action for conversion of goods, RSMo 537.520

Medical and health care providers, malpractice sections, 538.205 to 538.230; section 408.040 not applicable, RSMo 538.300

(1953) Where insurance companies which disclaimed liability to mortgagor, deposited proceeds of fire insurance policies in court during pendency of litigation for sole use of mortgagee and claimed right of subrogation to recover money back from mortgagor although he had paid premiums, they were liable for interest from date of judgment of circuit court in favor of mortgagor, City of New York Ins. Co. v. Stephens (Mo.), 260 S.W.2d 558.

(1957) Where allowance of claim by probate court was affirmed by circuit court but reversed and remanded on appeal and thereafter again allowed by judgment of circuit court, interest ran from date of last judgment of circuit court only. Minor v. Lillard (Mo.), 306 S.W.2d 541.

(1960) Where city deposited amount of judgment in condemnation action in court, it could enforce possession of the condemned land even though interest on judgment was not so deposited. Mayor, etc. of Liberty v. Boggess (A.), 332 S.W.2d 305.

(1964) Where prevailing plaintiff was required to remit part of judgment and a new judgment for reduced amount was entered as of the date of the original judgment, the plaintiff was entitled to interest on the amount of the new judgment from the date of the original judgment. Walton v. United States Steel Corp. (A.), 378 S.W.2d 240.

(1966) In suit for disbursement of funds paid into court, one interpleader is not entitled to interest for the period he was denied payment due to other interpleader's unsuccessful appeal. Winterton v. Van Zandt (A.), 397 S.W. 2d 693.

(1994) Where there is an offer of settlement for one dollar less than insurance coverage, offer is not ambiguous for purposes of statute and where judgment entered exceeded offer, statute mandates award of prejudgment interest. Open-ended prayer for relief is sufficient for plaintiff to be entitled to recover prejudgment interest. Specific pleading for prejudgment interest is not necessary under statute. Gibson v. Musil, 844 F.Supp. 1579 (W.D. Mo.).

(1998) Acknowledgment or actual notice of settlement offer is insufficient to obtain prejudgment interest. Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439 (Mo.banc), overruling Larabee v. Washington, 793 S.W.2d 357 (Mo.App. W.D.)

(2004) Section allows prejudgment interest on entire judgment, whether for compensatory or punitive damages. Werremeyer v. K.C. Auto Salvage Co. Inc., 134 S.W.3d 633 (Mo.banc), overruling Hoskins v. Business Men's Assurance, 116 S.W.3d 557 (Mo.App. W.D. 2003).

(2017) Post-judgment interest for nontort actions is awarded as a matter of law under 408.040.1 and automatically accrues, regardless of whether expressly included in the judgment. Dennis v. Riezman Berger, P.C., 529 S.W.3d 318 (Mo.).

408.050. Excess interest paid recoverable with costs and attorney fee. - No person shall directly or indirectly take, for the use or loan of money or other commodity, above the rates of interest specified in sections 408.020 to 408.040, for the forbearance or use of one hundred dollars, or the value thereof, for one year, and so after those rates for a greater or less sum, or for a longer or shorter time, or according to those rates or proportions, for the loan of any money or other commodity. Any person who shall violate the foregoing prohibition of this section shall be subject to be sued, for any and all sums of money paid in excess of the principal and legal rate of interest of any loan, by the borrower, or in case of borrower's death, by the administrator or executor of his estate, and shall be adjudged to pay the costs of suit, including a reasonable attorney's fee to be determined by the court.

(RSMo 1939 § 3229)

Prior revisions: 1929 § 2842; 1919 § 6494; 1909 § 7182

(1962) In action by borrower against bank to recover alleged usurious interest, parol evidence to effect that loan was to be for one year and that bank fraudulently induced borrowers to sign five year loan agreement and required additional payment at end of one year to close out loan, was inadmissible. Reich v. Pine Lawn Bank & Trust Co. (A.), 356 S.W.2d 545.

(1964) This section is not applicable to pawnbroker loans. McClure v. Norwick (A.), 382 S.W.2d 731.

408.052. Points prohibited, exception - penalties for illegal points - violation a misdemeanor - default charge authorized, when, exceptions. - 1. No lender shall charge, require or receive, on any residential

real estate loan, any points or other fees of any nature whatsoever, excepting insurance, including insurance for involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer or the seller or any other person, except that the lender may charge bona fide expenses paid by the lender to any other person or entity except to an officer, employee, or director of the lender or to any business in which any officer, employee or director of the lender owns any substantial interest for services actually performed in connection with a loan. In addition to the foregoing, if the loan is for the construction, repair, or improvement of residential real estate, the lender may charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for a default charge for any installment not paid in full within fifteen days of its scheduled due date. The restrictions of this section shall not apply:

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

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

(3) To any mortgage broker making loans on manufactured homes or modular units; and

(4) Provided that the 1994 reenactment of this section shall not be construed to be action taken in accordance with Public Law 96-221, Section 501(b)(4).

Any points or fees received in excess of those permitted under this section shall be returned to the person from whom received upon demand.

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

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

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

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

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

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

5. Any lender who knowingly violates the provisions of this section is guilty of a class B misdemeanor.

(L. 1974 2d Ex. Sess. S.B. 1, A.L. 1979 S.B. 305, A.L. 1989 H.B. 615 & 563 merged with S.B. 258, A.L. 1994 S.B. 701, A.L. 2000 S.B. 896, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2012 H.B. 1400)

408.060. Defendant may plead usury - judgment, how rendered - corporations cannot enter plea of usury. - Usury may be pleaded as a defense in civil actions in the courts of this state, and upon proof that usurious interest has been paid, the same, in excess of the legal rate of interest, shall be deemed payment, shall be credited upon the principal debt, and all costs of the action shall be taxed against the party guilty of exacting usurious interest, who shall in no case recover judgment for more than the amount found due upon the principal debt, with legal interest, after deducting therefrom all payments of usurious interest made by the debtor, whether paid as commissions or brokerage, or as payment upon

the principal, or as interest on said indebtedness; provided, however, that no corporation shall, after this section takes effect, interpose the defense of usury in any such action, nor shall any bond, note, debt, contract or obligation of any corporation or any security therefor, be set aside, impaired or adjudged invalid by reason of the rate of interest which the corporation may have paid or agreed to pay hereon.
(RSMo 1939 § 3230)
Prior revisions: 1929 § 2843; 1919 § 6495; 1909 § 7183

408.070. Usurious interest - security agreement invalid. - In actions for the enforcement of liens upon personal property subjected to a security agreement to secure indebtedness, or to maintain or secure possession of property so subjected to a security agreement, or in any other case when the validity of such lien is drawn in question, proof upon the trial that the party holding or claiming to hold the lien has received or exacted usurious interest for the indebtedness shall render any security agreement of personal property, or any lien whatsoever thereon given to secure the indebtedness, invalid and illegal.
(RSMo 1939 § 3231, A.L. 1965 p. 114)
Prior revisions: 1929 § 2844; 1919 § 6496; 1909 § 7184

(1977) Lender is not precluded from showing that charge of interest in excess of legal rate was unintentional or inadvertent and without existence of intent is not usurious. Wyckoff v. Commerce Bank of Kansas City (A.), 561 S.W.2d 399.

408.080. Interest may be paid on interest - compounding limited to once a month - prohibited for certain loans. - Parties may contract, in writing, for the payment of interest upon interest; but the interest shall not be compounded more often than once a month. Where a different rate is not expressed, interest upon interest shall be at the same rate as interest on the principal debt. Loans governed by section 408.035 are not subject to the provisions of this section.
(RSMo 1939 § 3232, A.L. 1982 H.B. 1341, et al., A.L. 1992 S.B. 688)

408.081. Validity of certain existing contract not to be affected, when. - Nothing in sections 408.035, 408.036 and 408.080 shall affect the validity of any contract in existence on August 28, 1992.
(L. 1992 S.B. 688)

408.083. Credit contracts, prepayment before maturity, computation of interest. - Notwithstanding any other provision of law to the contrary, all credit contracts with interest or time price differential calculated on an add-on basis entered into after August 28, 2002, the proceeds of which are used for personal, family or household purposes, shall provide that the amount of interest or time price differential earned upon prepayment in full will be computed on the basis of the rate or rate formula originally contracted for on the actual unpaid principal balances for the time actually outstanding.
(L. 1988 S.B. 426 § 1, A.L. 2002 S.B. 895)

408.090. Demand loans where only securities are pledged not subject to usury laws. - Any other laws to the contrary notwithstanding, in any case in which advances of money, repayable on demand, are made solely upon securities, as defined in section 400.8-102(a) RSMo 1969, pledged as collateral for such repayment and in which such advances are used by the borrower only for the purchase of securities, as so defined, it shall be lawful to receive or to contract to receive and collect, as compensation for making such advances, any sum agreed upon by the parties to such transaction.
(L. 1974 S.B. 455 § 1)

408.092. Attorney fees, enforcement of credit agreements, limitations. - 1. Notwithstanding any other provision of law to the contrary, attorneys' fees are permitted to enforce a credit agreement provided the enforcing attorney is a licensed member of the Missouri bar or is authorized to practice law in Missouri, and such fees meet one of the following requirements:

(1) Such fees are included in the written credit agreement, and are not otherwise prohibited by law; or

(2) Such fees do not exceed fifteen percent of the outstanding credit balance in default, provided such credit was extended by a for-profit business or credit union.

2. At the court's discretion, additional fees may be awarded to the attorney for the prevailing party.

3. For the purposes of this section, a credit agreement shall have the same meaning as provided in subsection 1 of section 432.045, RSMo.

4. No provision of this section shall be construed to authorize or limit attorney's fees

permitted parties and transactions not covered by this section.
(L. 1997 H.B. 257)

408.095. Charging interest of more than two percent per month a misdemeanor, exceptions. - Every person or persons, company, corporation or firm, and every agent of any person, persons, company, corporation* or firm, who shall take or receive, or agree to take or receive, directly or indirectly, by means of commissions of brokerage charges, or otherwise, for the forbearance or use of money or other commodities, any interest at a rate greater than two percent per month, except as permitted by the laws of this state, shall be deemed guilty of a misdemeanor. Nothing herein contained shall be construed as authorizing a higher rate of interest than is now provided by law.
(RSMo 1939 § 4813, A.L. 1974 2d Ex. Sess. S.B. 1)
Prior revisions: 1929 § 4421; 1919 § 3680; 1909 § 4892
*Word "corporations" appears in original rolls.

408.096. Loan arrangement, excess fee prohibited for certain transactions - penalty. - No person, firm or corporation shall receive or impose any fee or charge, other than one expressly provided for 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.
(L. 1979 S.B. 305)

INTEREST ON SMALL LOANS

408.100. Applicability of section - rate of interest. - This section shall apply to all loans which are not made as permitted by other laws of this state except that it shall not apply to loans which are secured by a lien on real estate. On any loan subject to this section, any person, firm, or corporation may charge, contract for and receive interest on the unpaid principal balance at rates agreed to by the parties.
(L. 1951 p. 875 § 408.031, A.L. 1959 H.B. 320, A.L. 1979 S.B. 305, A.L. 1985 H.B. 358 & 440, A.L. 1998 S.B. 792, A.L. 2021 S.B. 106)

408.105. Precomputed loans, extensions, fee, limitations. - 1. Extensions on precomputed loans made pursuant to section 408.100 shall be calculated on an actuarial basis or as follows and shall not be considered an additional charge or fee within the meaning of section 408.140:

$$\text{UNIT CHARGE (UC)} = \frac{\text{Total Finance Charge}}{\text{Sum of the Digits of Original Term}}$$

$$\text{EXTENSION FEE} = \text{UC Times Number of Full Remaining Installments}$$

2. The following limitations regarding extensions on precomputed loans shall apply:

(1) No extension may be taken on the first installment;

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

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

(4) A minimum extension fee of one dollar will be allowed;

(5) In the event of * prepayment in full of the note or contract, the extensions shall be counted as months and computed as provided in section 408.170, based on this total, applied to all of the interest contracted for, plus the extension fees collected.
(L. 1985 S.B. 183)
*Word "of" does not appear in original rolls.

408.110. Short title - applicability of sections 408.120 to 408.190. - Sections 408.120 to 408.190 shall apply only to loans made pursuant to section 408.100, and shall be known as the "Consumer Loan Act".
(L. 1951 p. 875 § 408.032, A.L. 1981 S.B. 326, A.L. 1996 H.B. 1432)

408.120. Interest computed and paid, how. - The total interest for payment according to schedule may be added to the principal of the loan, but interest shall not be discounted or deducted from the principal of the loan, or paid or received at the time the loan is made, and shall not be compounded. Loan contracts may be calculated and repaid as follows:

(1) A loan contract may provide for repayment in consecutive monthly installments, but the first installment may be payable at any time within forty-five days from the date of the

loan and no installment shall be substantially greater than any other installment. Interest for any fractional portion of a month may be computed for each elapsed day at one-thirtieth of the monthly rate contracted for.

(2) A loan contract may provide for repayment as the parties may agree; however, any such loan contract shall provide for the payment of simple interest on such loans at rates not to exceed those authorized by sections 408.100 and 408.200.

(L. 1951 p. 875 § 408.032(a), A.L. 1981 S.B. 326)

408.130. Borrower to receive statement of contract - contents - prepayment effect - receipts for payments. - 1. At the time the loan is made, there shall be delivered to the borrower, or, if there are two or more borrowers, to one of them, a written statement or copy of the loan contract showing in clear and distinct terms:

(1) The name and address of the lender and of one of the borrowers;

(2) The date of the loan contract;

(3) The schedule of installments or description thereof;

(4) The type of any instrument securing the loan;

(5) The principal amount of the loan excluding interest;

(6) The rate or amount of interest as the contract may provide;

(7) That the borrower may prepay the loan, in whole or in part, at any time, and in case interest has been added to the principal of the loan;

(8) That the interest is subject to the refund requirements of section 408.170 if the loan is prepaid in full.

2. A receipt shall be given for the amount of each payment made in currency. Any note paid in full, or a copy thereof, shall be so marked "paid" and returned, and any security interest which no longer secures a loan shall be restored, cancelled or released.

(L. 1951 p. 875 § 408.032(b), A.L. 1965 p. 114, A.L. 1994 H.B. 963)

408.140. Additional charges or fees prohibited, exceptions - no finance charges if purchases are paid for within certain time limit, exception. - 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200 and except:

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

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

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

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

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

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

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

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

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

(10) 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;

(11) 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:

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

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

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

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

(L. 1951 p. 875 § 408.032 (c), A.L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, S.B. 326, A.L. 1984 S.B. 686, A.L. 1986 H.B. 1207, A.L. 1989 H.B. 386 merged with H.B. 615 & 563 merged with S.B. 192, A.L. 1990 H.B. 1630 merged with S.B. 768, A.L. 1992 S.B. 705 merged with S.B. 688, A.L. 1994 H.B. 1312, A.L. 1996 S.B. 683, A.L. 1998 S.B. 792, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2002 S.B. 895, A.L. 2003 S.B. 346, A.L. 2004 H.B. 959 merged with S.B. 1233, et al., A.L. 2011 S.B. 83, A.L. 2013 H.B. 329 merged with S.B. 254, A.L. 2015 S.B. 345, A.L. 2017 H.B. 292, A.L. 2021 S.B. 106)

408.145. Fees for credit cards issued in contiguous states. - 1. To encourage competitive equality, lenders issuing credit cards in this state pursuant to the authority of section 408.100 or 408.200, may in addition to lawful interest, contract for, charge and collect fees for such credit cards which any lender in any contiguous state is permitted to charge for credit cards issued in such contiguous state by such state's statutes. State-chartered lenders charging such fees in reliance on this subsection shall file a copy of the pertinent statutes of one contiguous state authorizing credit card fees with the director of finance or such lender's principal state regulator. The director of finance or other principal state regulator shall, within thirty days after receipt of the filing, approve or disapprove of such fees on the sole basis of whether the statutes of such contiguous state permit such fees, and without regard to the restrictions placed upon credit cards by subsection 2 of this section. When the lender is chartered by the federal government, or any agency thereunder, or is unregulated, such lender shall file with and be approved by the Missouri attorney general under the same provision as provided a state-chartered lender.

2. **"Credit card"** as used in this section shall mean a credit device defined as such in the federal Consumer Credit Protection Act and regulations thereunder, except:

(1) The term shall be limited to credit devices which permit the holder to purchase goods and service upon presentation to third parties whether or not the credit card also permits the holder to obtain loans of any other type; and

(2) Such credit device shall only provide credit which is not secured by real or personal property.

3. **"Lender"** as used in this section shall mean any category of depository or nondepository creditor. Notwithstanding the provisions of section 408.140, the lender shall declare on each credit card contract whether the credit card fees are governed by section 408.140, or by this section.

(L. 1998 S.B. 792 and S.B. 852 & 913)

408.150. Lender can not receive excess interest - failure by lender to return excess interest, damages allowed. - If any amount in excess of the interest permitted by sections 408.100 to 408.190 is charged or received on any loan except as the result of a bona fide error, the lender shall be barred from recovery of any interest on the contract and shall upon demand return all interest received to the person from* whom received. If such interest is not returned upon written demand, then the person paying the same or his legal representative may recover twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that the action is brought within five years of such written demand.

(L. 1951 p. 875 § 408.032(d), A.L. 1982 H.B. 1341, et al.)

*Word "from" does not appear in original rolls.

408.160. False advertising prohibited. - No person, firm, or corporation shall print, publish, distribute or cause the same to be done in any manner whatsoever, any written or printed statement with regard to interest or charges, terms or conditions for the lending of money which is false or calculated to deceive.

(L. 1951 p. 875 § 408.032(e))

408.170. Contracts paid in full before due date - recomputations of interest - refund defined. - If a note or loan contract providing for amount of interest, added to the principal of the loan, is prepaid in full (by cash, renewal, or refinancing) one month or more before the final installment date, the lender shall either:

(1) Recompute the amount of interest earned to the date of prepayment in full on the basis of the rate of interest originally contracted for computed on the actual unpaid principal balances for the time actually outstanding; or

(2) If the initial term of the contract is sixty-one months or less and it is a contract for five thousand dollars or less, give a refund of a portion of the amount of interest originally contracted for which shall be computed as follows: The amount of the refund shall be at least as great a proportion of such amount of interest as the sum of the full monthly balances of the contract scheduled to follow the installment date after the date of prepayment in full bears to the sum of all the monthly balances of the contract, both sums to be determined according to the payment schedule provided by the contract; except that, if prepayment in full occurs during the first installment period, interest shall be recomputed and charged only for the actual number of days elapsed. When the period before the first installment is more or less than one month, the portion of the interest earned for such period shall be determined by counting each day in such period as one-thirtieth of a month and one three hundred and sixtieth of a year.

2. No refund shall be required for any partial prepayment.

3. For a contract for more than five thousand dollars, the word **"refund"** as used herein shall mean a credit or deduction from the amount of interest originally contracted for at any time by cash, renewal or refinancing, the buyer shall receive a refund which shall be calculated by the actuarial method. The lender shall retain no more interest than is actually earned whenever a note or loan contract is prepaid.

(L. 1951 p. 875 § 408.032(f), A.L. 1986 H.B. 1207, A.L. 2002 S.B. 895)

408.175. Interest rate when maturity of note or contract accelerated. - If the maturity of a note or loan contract providing for an amount of interest added to the principal of the loan is accelerated, the unpaid balance shall be reduced by the refund of that portion of the amount of interest originally contracted for which would be required for prepayment in full on the date of acceleration, and thereafter the note or loan contract shall bear interest at the rate originally contracted for, computed on unpaid balances for the time actually outstanding from the installment date following the date of acceleration until paid.

(L. 1959 H.B. 321)

408.178. Deferral of monthly loan payments, fee authorized for certain loans. - Notwithstanding any other law to the contrary, and provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the

debtor to defer monthly loan payments, so long as the fee on each deferred period is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, however, a minimum fee of twenty-five dollars is permitted, and no extensions are made until the first loan payment is collected on any one loan. This section applies to nonprecomputed loans only.
(L. 2004 H.B. 959, A.L. 2021 S.B. 106)

408.180. Authority of director to verify interest rates charged. - The director of finance shall have the power and duty to verify the correctness of the rate and amount of interest charged or received and the refund of interest made on any loan which is subject to section 408.100.
(L. 1951 p. 875 § 408.032(g))

408.190. Certain loans exempt from sections 408.120 to 408.180, and 408.200. - Sections 408.120 to 408.180 and 408.200 shall not apply to any loan on which the rate or amount of interest and fees charged or received are lawful under Missouri law without regard to the rates permitted in section 408.100 and the fees permitted in sections 408.140, 408.145, and 408.178.
(L. 1951 p. 875 § 408.032(h), A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 2004 H.B. 959)

408.193. Credit cards, no derogatory reports to credit agencies for carrying a zero balance. - 1. For the purposes of this section, the term **"credit card"** shall mean a credit device defined as such in the federal Consumer Credit Protection Act.

2. Any entity that issues credit cards in this state, delivers credit cards in this state or causes credit cards to be delivered in this state shall not make any derogatory report to a credit reporting agency on any credit card holder solely because such credit card holder has paid the entire outstanding balance on such credit card by the payment date.

3. Nothing herein shall authorize or prohibit an entity from suspending credit card privileges or recalling the issued credit card for any purpose.
(L. 1998 S.B. 852 & 913 § 1)

408.200. Borrower not to be indebted on two or more contracts with same lender, when. - No lender shall permit any borrower to be indebted to such lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving more interest on the multiple notes or contracts than would have been permissible on a single note or contract entered into in accordance with section 408.100.
(L. 1951 p. 875 § 408.033, A.L. 1959 H.B. 320, A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1977 S.B. 317, A.L. 1979 S.B. 305, A.L. 1985 H.B. 358 & 440, A.L. 1998 S.B. 792)

408.210. Assignment of wages or compensation - excess over loan deemed interest. - The payment of four hundred dollars or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purpose of this chapter and any act regulating loans or punishing usury be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall for the purposes of this chapter and any act regulating loans or punishing usury be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable, and such transaction shall be governed by and subject to the provisions of this chapter, provided that nothing in this section contained shall be construed as authorizing the assignment of wages, salaries, commissions, or other compensation for services not earned at the time when such purported sale or assignment thereof is made. In case any transaction defined in this section results in a greater rate or amount of interest or charges than is permitted by law, all contracts taken in connection with such transaction shall be void and the lender shall have no right to collect, receive, or retain any principal, interest or charges.
(L. 1951 p. 875 § 408.034)

408.213. Changes to certain sections remedial only. - The changes in sections 408.140, 408.145, 408.190, and 408.232 are remedial and should be given that construction; however, this section shall have no effect, favorably or unfavorably, on any case filed in court prior to January 1, 2004.
(L. 2004 H.B. 959 § 408.480)

SECOND MORTGAGE LOANS

408.231. Definitions. - 1. A **"second mortgage loan"** shall mean a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which residential real estate is subject to one or more prior mortgage loans.

2. **"Principal"** of a second mortgage loan means the total of the net amount paid to, receivable by, contracted for, or paid or payable for the account of the borrower, and to the extent payment is deferred, additional charges permitted by section 408.233.

3. **"Residential real estate"** shall mean any real estate used or intended to be used as a residence by not more than four families, notwithstanding the provisions of section 408.015.

(L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1985 S.B. 183, A.L. 1986 S.B. 667, A.L. 1994 H.B. 1312 & S.B. 718)

408.232. Rates and terms. - 1. With respect to a second mortgage loan, any person, firm or corporation may charge, contract for, and receive interest in any manner at rates agreed to by the parties computed on unpaid balances of the principal for the time actually outstanding.

2. The term of the loan, for purposes of this section, commences with the date the loan is made. Differences in the lengths of months are disregarded, and a day may be counted as one-thirtieth of a month and one-three hundred sixtieth of a year. When a second mortgage loan contract provides for monthly installments, the first installment may be payable at any time within one month and fifteen days of the date of the loan.

3. For revolving loans, charges may be computed at a daily rate of one-thirtieth of the monthly rate on actual daily balances or at a monthly rate on the average daily balance in each monthly billing cycle.

4. Sections 408.231 to 408.241 shall not apply to any loans on which the rate of interest and fees charged are lawful under Missouri law without regard to the rates permitted in subsection 1 of this section and the fees permitted in section 408.233.

(L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1994 H.B. 1312 merged with S.B. 718, A.L. 1998 S.B. 792, A.L. 2004 H.B. 959)

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

(1) Fees and charges prescribed by law actually and necessarily paid to public officials for perfecting, releasing, or satisfying a security interest related to the second mortgage loan and reasonable and bona fide third-party fees incurred for remote or electronic filing;

(2) Taxes;

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

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

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

(c) Fees for notarizing deeds and other documents;

(d) Appraisal fees; and

(e) Fees for credit reports;

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

(5) A nonrefundable origination fee not to exceed five percent of the principal which may be used by the lender to reduce the rate on a second mortgage loan;

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

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

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

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

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

3. The cost of any insurance shall not exceed the rates filed with the department of commerce and insurance, and the insurance shall be obtained from an insurance company duly authorized to conduct business in this state. Any person or entity making second mortgage loans, or any of its employees, may be licensed to sell insurance permitted in this section.

4. On any second mortgage loan, a default charge may be contracted for and received for any installment or minimum payment not paid in full within fifteen days of its scheduled

due date equal to five percent of the amount or fifteen dollars, whichever is greater, not to exceed fifty dollars. A default charge may be collected only once on an installment or a payment due however long it remains in default. A default charge may be collected at the time it accrues or at any time thereafter and for purposes of subsection 2 of section 408.234 a default charge shall be treated as a payment. No default charge may be collected on an installment or a payment due which is paid in full within fifteen days of its scheduled due date even though an earlier installment or payment or a default charge on earlier installment or payments may not have been paid in full.

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

6. 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. 1979 S.B. 305, A.L. 1982 H.B. 1341, et al., A.L. 1983 S.B. 70 § 408.233 merged with § 5, A.L. 1985 H.B. 826, A.L. 1986 S.B. 667 merged with H.B. 1207, A.L. 1989 S.B. 192, A.L. 1998 S.B. 792, A.L. 2003 S.B. 346, A.L. 2008 S.B. 788, A.L. 2011 S.B. 83, A.L. 2021 S.B. 106)

408.234. Collateral - prepayment rights, method of computation. - 1. A lender may take a security interest in any collateral in conjunction with residential real estate in connection with a second mortgage loan.

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

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

(L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, A.L. 1994 H.B. 1312 merged with S.B. 718, A.L. 2000 S.B. 896, A.L. 2021 S.B. 106)

408.235. Director may examine certain lenders. - The director of the division of finance shall have full power and authority at any time and as often as reasonably necessary to investigate and examine the books, records, and papers of any lender making second mortgage loans pursuant to this act,* and may compel the production of all relevant books, records, accounts, and documents with respect to loans made under sections 408.231 to 408.241. Provided, however, this section shall not apply to those corporations whose powers emanate from the laws of the United States and those which are subject to the divisions of credit unions and finance.

(L. 1979 S.B. 305, A.L. 1994 H.B. 1312 merged with S.B. 718)

*"This act" (H.B. 1312, 1994, and S.B. 718, 1994) contained numerous sections. Consult Disposition of Sections table for a definitive listing.

408.236. Recovery of interest barred, when, exceptions - actions taken or omitted in reliance on interpretation by division of finance, effect. - Any person violating the provisions of sections 408.231 to 408.241 shall be barred from recovery of any interest on the contract, except where such violations occurred either:

(1) As a result of an accidental and bona fide error of computation; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of the provisions of sections 408.231 to 408.241 by the division of finance.

(L. 1979 S.B. 305, A.L. 1988 H.B. 1355, A.L. 1994 H.B. 1312 merged with S.B. 718)

408.237. Applicability of sections 408.231 to 408.241. - Sections 408.231 to 408.241 shall not apply to any transaction in

which a single extension of credit is allocated between a first lien and any number of subordinate liens, for the purpose or with the result of contracting for or receiving a higher rate of interest than would have been permitted if the loan had been made under section 408.030.
(L. 1979 S.B. 305, A.L. 1994 H.B. 1312 merged with S.B. 718)

408.240. Penalties - actions taken or omitted in reliance on written interpretation by division, effect. - Any person, firm, or corporation who or which shall violate the provisions of sections 408.100 to 408.241 and any member, officer, director, agent or employee of such person, firm or corporation who shall participate in such violation shall be guilty of a class A misdemeanor, except where such violation occurred either:

(1) As a result of an accidental and bona fide error of computation; or

(2) As a result of any acts done or omitted in reliance on a written interpretation of sections 408.231 to 408.241 by the division of finance. Section 408.095 shall not apply to a loan which complies with sections 408.100 to 408.241.
(L. 1979 S.B. 305, A.L. 1988 H.B. 1355, A.L. 1994 H.B. 1312 merged with S.B. 718)

408.241. Prepayment fee, second mortgage loans, allowed when. - Notwithstanding the provisions of sections 408.233 and 408.234, a prepayment fee may be charged on second mortgage loans, as defined in section 408.231, under the same provisions as is allowed under section 408.036.
(L. 1991 H.B. 180 § 1)

RETAIL CREDIT SALES

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, and reasonable and bona fide third-party fees incurred for remote or electronic filing;

(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, A.L. 2021 S.B. 106)

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 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)

BUYER'S DEFENSES AGAINST HOLDER OF CREDIT INSTRUMENT

408.400. Definitions. - 1. As used in sections 408.400 to 408.415, unless the context otherwise requires:

(1) **"Arranged"** means to provide or offer to provide a loan which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such loan receives or will receive a fee, compensation, or other consideration for such service or has knowledge of the terms of the loan and participates in the preparation of the instruments required in connection with the extension of the loan;

(2) **"Consumer goods or services"** means goods or services for use primarily for personal, family or household purposes.

2. The definitions in Articles 1, 3 and 9 of chapter 400, RSMo, are applicable to sections 408.400 to 408.415.

(L. 1974 H.B. 1047, 1110 & 1212 § 1, A.L. 1983 H.B. 713 Revision)

408.405. Defenses or setoffs arising from transaction good against holder of security instrument, when. - The rights of a holder or assignee of an instrument, account, contract, right, chattel paper or other writing other than a check or draft, which evidences the obligation of a natural person as buyer, lessee, or borrower in connection with the purchase or lease of consumer goods or services, are subject to all defenses and setoffs of the debtor arising from or out of such sale or lease, notwithstanding any agreement to the contrary, only as to amounts then owing and as a matter of defense to or setoff against a claim by the holder or assignee;

provided, however, with respect to goods only, the rights of the debtor under this section may be asserted to the seller at the address at which he did business at the time of the sale and must be so asserted within ninety days after receipt of the goods.
(L. 1974 H.B. 1047, et al. § 2)

(1986) Home improvements held to be "consumer goods" within the meaning of this section. Roosevelt Federal Savings & Loan Ass'n v. Crider, 722 S.W.2d 325 (Mo.App.1986).

408.410. Exempt transactions. - Sections 408.400 to 408.415 are not applicable to:

(1) An instrument or other writing which evidences a loan or indebtedness to a lender or person, other than a seller or lessor, which was not arranged by a seller or lessor, the proceeds of which are used by the buyer or lessee to satisfy an obligation to a seller or lessor;

(2) Credit card sales on a credit card issued by an issuer other than the seller.
(L. 1974 H.B. 1047, et al. § 3)

408.415. Chapter 400 is modified by provisions of sections 408.400 to 408.415. - Subject to the provisions of sections 408.400 to 408.415, the provisions of chapter 400, RSMo 1969, shall be applicable to any consumer credit transaction.
(L. 1974 H.B. 1047, et al. § 4)

408.455. Variable rate agreements subject to certain provisions. - All contracts or agreements originally subject to sections 408.450 to 408.470, existing on August 28, 2003, shall remain subject to the provisions of sections 408.140, 408.150, 408.160 and 408.550 to 408.562, even if the contract or agreement is converted into another form of credit.
(L. 1984 H.B. 1170, A.L. 2003 H.B. 221 merged with S.B. 346)

LENDERS OF UNSECURED LOANS OF FIVE HUNDRED DOLLARS OR LESS

408.500. Unsecured loans of five hundred dollars or less, licensure of lenders, interest rates and fees allowed - penalties for violations - cost of collection expenses - notice required, form. - 1. Lenders, other than banks, trust companies, credit unions, savings banks and savings and loan companies, in the business of making unsecured loans of five hundred dollars or less shall obtain a license from the director of the division of finance. An annual license fee of five hundred dollars per location shall be required. The license year shall commence on January first each year and the license fee may be prorated for expired months. 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. The provisions of this section shall not apply to pawnbroker loans, consumer credit loans as authorized under chapter 367, nor to a check accepted and deposited or cashed by the payee business on the same or the following business day. The disclosures required by the federal Truth in Lending Act and regulation Z shall be provided on any loan, renewal or extension made pursuant to this section and the loan, renewal or extension documents shall be signed by the borrower.

2. Entities making loans pursuant to this section shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140. Any contract evidencing any fee or charge of any kind whatsoever, except for bona fide clerical errors, in violation of this section shall be void. Any person, firm or corporation who receives or imposes a fee or charge in violation of this section shall be guilty of a class A misdemeanor.

3. Notwithstanding any other law to the contrary, cost of collection expenses, which include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad check or breach of contract shall not be considered as a fee or charge for purposes of this section.

4. Lenders licensed pursuant to this section shall conspicuously post in the lobby of the office, in at least fourteen-point bold type, the maximum annual percentage rates such licensee is currently charging and the statement:

NOTICE:

This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.

5. The lender shall provide the borrower with a notice in substantially the following form set forth in at least ten-point bold type, and receipt thereof shall be acknowledged by signature of the borrower:

(1) This lender offers short-term loans. Please read and understand the terms of the loan agreement before signing.

(2) You may cancel this loan without costs by returning the full principal balance to the lender by the close of the lender's next full business day.

6. The lender shall renew the loan upon the borrower's written request and the payment of any interest and fees due at the time of such renewal; however, upon the first renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal amount of the loan by not less than five percent of the original amount of the loan until such loan is paid in full. However, no loan may be renewed more than six times.

7. When making or negotiating loans, a licensee shall consider the financial ability of the borrower to reasonably repay the loan in the time and manner specified in the loan contract. All records shall be retained at least two years.

8. A licensee who ceases business pursuant to this section must notify the director to request an examination of all records within ten business days prior to cessation. All records must be retained at least two years.

9. Any lender licensed pursuant to this section who fails, refuses or neglects to comply with the provisions of this section, or any laws relating to consumer loans or commits any criminal act may have its license suspended or revoked by the director of finance after a hearing before the director on an order of the director to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the licensee at least ten days prior to the hearing.

10. Whenever it shall appear to the director that any lender licensed pursuant to this section is failing, refusing or neglecting to make a good faith effort to comply with the provisions of this section, or any laws relating to consumer loans, the director may issue an order to cease and desist which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(L. 1990 H.B. 961, A.L. 1998 H.B. 1189, A.L. 2001 H.B. 738 merged with S.B. 186, A.L. 2002 S.B. 884, A.L. 2003 S.B. 346, A.L. 2015 H.B. 587 merged with S.B. 345)

408.505. Term of loans, charges permitted, repayment, return check charge. - 1. This section shall apply to:

(1) Unsecured loans made by lenders licensed or who should have been licensed pursuant to section 408.500;

(2) Any person that the Missouri division of finance determines that has entered into a transaction that, in substance, is a disguised loan; and

(3) Any person that the Missouri division of finance determines has engaged in subterfuge for the purpose of avoiding the provisions of this section.

2. All loans made pursuant to this section and section 408.500, shall have a minimum term of fourteen days and a maximum term of thirty-one days, regardless of whether the loan is an original loan or renewed loan.

3. A lender may only charge simple interest and fees in accordance with sections 408.100 and 408.140. No other charges of any nature shall be permitted except as provided by this section, including any charges for cashing the loan proceeds if they are given in check form. However, no borrower shall be required to pay a total amount of accumulated interest and fees in excess of seventy-five percent of the initial loan amount on any single loan authorized pursuant to this section for the entire term of that loan and all renewals authorized by section 408.500 and this section.

4. A loan made pursuant to the provisions of section 408.500 and this section shall be deemed completed and shall not be considered a renewed loan when the lender presents the instrument for payment or the payee redeems the instrument by paying the full amount of the instrument to the lender. Once the payee has completed the loan, the payee may enter into a new loan with a lender.

5. Except as provided in subsection 3 of this section, no loan made pursuant to this section shall be repaid by the proceeds of another loan made by the same lender or any person or entity affiliated with the lender. A lender, person or entity affiliated with the lender shall not have more than five hundred dollars in loans made pursuant to section 408.500 and this section outstanding to the same borrower at any one time. A lender complies with this subsection if:

(1) The consumer certifies in writing that the consumer does not have any outstanding small loans with the lender which in the aggregate exceeds five hundred dollars, and is not repaying the loan with the proceeds of another loan made by the same lender; and

(2) The lender does not know, or have reason to believe, that the consumer's written certification is false.

6. On a consumer loan transaction where cash is advanced in exchange for a personal

check, a return check charge may be charged in the amounts provided by sections 408.653 and 408.654, as applicable.

7. No state or public employee or official, including a judge of any court of this state, shall enforce the provisions of any contract for payment of money subject to this section which violates the provisions of section 408.500 and this section.

8. A person does not commit the crime of passing a bad check pursuant to section 570.120, RSMo, if at the time the payee accepts a check or similar sight order for the payment of money, he or she does so with the understanding that the payee will not present it for payment until later and the payee knows or has reason to believe that there are insufficient funds on deposit with the drawee at the time of acceptance. However, this section shall not apply if the person's account on which the instrument was written was closed by the consumer before the agreed-upon date of negotiation or the consumer has stopped payment on the check.

9. A lender shall not use a device or agreement that would have the effect of charging or collecting more fees, charges, or interest than allowed by this section, including, but not limited to:

(1) Entering into a different type of transaction;

(2) Entering into a sales lease back arrangement;

(3) Catalog sales;

(4) Entering into any other transaction with the consumer that is designed to evade the applicability of this section.

10. The provisions of this section shall only apply to entities subject to the provisions of section 408.500 and this section.

(L. 2002 S.B. 884)

408.506. Report to the general assembly, contents. - The division of finance shall report to the general assembly beginning on January 1, 2003, and on the first day of January every other year thereafter, the number of licenses issued by the director pursuant to section 408.500, the number of loans issued by said lenders, the average face value of such loans, the average number of times said loans are renewed, the number of said loans that are defaulted on an annual basis, and the number and nature of complaints made to the director by customers on such licensees and the disposition of such complaints. Such report shall also include the average interest and fees charged and collected by lenders on such loans, and a comparison of such with similar small loan lenders from adjoining states.

(L. 2002 S.B. 884)

408.510. Licensure of consumer installment lenders - interest and fees allowed. - Notwithstanding any other law to the contrary, the phrase **"consumer installment loans"** means secured or unsecured loans of any amount and payable in not less than four substantially equal installments over a period of not less than one hundred twenty days. The phrase "consumer installment lender" means a person licensed to make consumer installment loans. A consumer installment lender shall be licensed in the same manner and upon the same terms as a lender making consumer credit loans. Such consumer installment lenders shall contract for and receive interest and fees in accordance with sections 408.100, 408.140, and 408.170. Consumer installment lenders shall be subject to the provisions of sections 408.551 to 408.562.

(L. 2001 S.B. 186, A.L. 2002 S.B. 895)

408.512. Loans by traditional installment loan lenders. - 1. Any traditional installment loan lender licensed under sections 367.100 to 367.200 or section 408.510 shall be permitted to make loans and charge fees and interest as authorized under sections 408.100, 408.140, and 408.170.

2. No charter provision, ordinance, rule, order, permit, policy, guideline, or other governmental action of any political subdivision of the state, local government, city, county, or any agency, authority, board, commission, department, or officer thereof shall:

(1) Prevent, restrict, or discourage traditional installment loan lenders from lending under sections 408.100, 408.140, and 408.170;

(2) Prevent, restrict, or discourage traditional installment loan lenders from operating in any location where any lender who makes loans payable in equal installments over more than ninety days is permitted; or

(3) Create any disincentives for any traditional installment loan lender from engaging in lending under sections 408.100, 408.140, and 408.170. Any fee charged to any traditional installment loan lender that is not charged to all lenders licensed or regulated by the division of finance shall be a disincentive in violation of this section.

The provisions of this subsection shall not apply where a charter provision or valid ordinance as of August 28, 2014, expressly applies to traditional installment loan lenders.

3. As used in this section, the following terms shall mean:

(1) **"Fully amortized"**, the principal, defined as amount financed under the federal Truth in Lending Act, and the scheduled interest, defined as finance charge under the federal Truth in Lending Act, are repaid in substantially equal multiple installments at fixed intervals to fulfill the consumer's obligation;

(2) **"Traditional installment loan"**, fixed rate, fully amortized closed-end extensions of direct consumer loans. However, if any of the following are true, the transaction is not a traditional installment loan:

(a) The transaction has a repayment term of one hundred eighty-one days or fewer and is secured by the title to the borrower's motor vehicle or auto;

(b) The transaction requires that the full amount of the credit extended together with all fees and charges for the credit be repaid in ninety-one days or fewer;

(c) The transaction's scheduled repayment plan contains one or more interest-only payments or a payment that is more than ten percent greater than the average of all other scheduled payment amounts;

(d) The transaction, at origination, requires the borrower:

a. To agree to a preauthorized automatic withdrawal in the form of a bank draft, a preapproved automated clearing house or its equivalent;

b. To agree to an allotment or an agreement to defer presentment of one or more contemporaneously-dated or postdated checks; or

c. To repay the loan in full at a borrower's next payday or other recurring deposit cycle, where the repayment is connected with a bank account;

(3) **"Traditional installment loan lender"**, a licensee under sections 367.100 to 367.200 or section 408.510 whose direct consumer loans are limited only to traditional installment loans.

4. Nothing in this section shall apply to or preempt any ordinance governing installment lenders, or any amendment to any such ordinance, in a home rule city with more than four hundred thousand inhabitants and located in more than one county.

5. Traditional installment loan lenders may charge, in addition to any other contractual fees, a convenience fee or surcharge for payments made by a debit or credit card in an amount not to exceed any third-party charge.

6. Any traditional installment loan lender who prevails against a political subdivision in an action to enforce this section or in defending an action using this section as a defense shall receive from the political subdivision costs actually incurred including, but not limited to, attorney's fees.

(L. 2014 S.B. 866, A.L. 2020 S.B. 599)

LOAN DISCRIMINATION

408.550. Discrimination prohibited - damages recoverable. - 1. No person, upon proper application, shall be denied credit under the provisions of sections 408.015 to 408.562 on the basis of sex, marital status, age, race or religion. Any action which complies with the provisions of the Equal Credit Opportunity Act, Public Law 93-495 (15 USC 1691 et seq.), and rules and regulations promulgated thereto shall be deemed to be in compliance with this section. Any borrower discriminated against on any of these prohibited bases may recover five hundred dollars or actual damages, whichever is greater, court costs and attorney's fees.

2. No person shall be denied credit under the provisions of sections 408.015 to 408.562 because of any exercise of his rights under law.

(L. 1979 S.B. 305)

DEFAULTS

408.551. Applicability of sections 408.551 to 408.562 - credit transaction defined. - Sections 408.551 to 408.562 shall apply to any credit transaction made primarily for personal, family or household purposes pursuant to sections 365.010 to 365.160, RSMo, and sections 408.100 to 408.370. For the purposes of this section, unless the context requires otherwise, **"credit transaction"** shall mean any retail installment transaction as defined by section 365.020, RSMo, or any loan subject to section 408.100 or any second mortgage loan as defined by section 408.231 or any retail time transaction as defined in section 408.250.

(L. 1979 S.B. 305, A.L. 1984 H.B. 1170, A.L. 1998 S.B. 792)

408.552. Enforceability of default provisions. - An agreement of the parties to a credit transaction concerning default by the borrower is enforceable only to the extent that:

(1) The borrower fails to make a payment as required by agreement; or

(2) The lender's prospect of payment, performance, or ability to realize upon the

collateral is significantly impaired; the burden of establishing significant impairment is on the lender.
(L. 1979 S.B. 305)

408.553. Recovery limitation. - Upon default the lender shall be entitled to recover the amount due and accrued under the agreement, including interest and penalties through the date of payment in full or to the date of a final judgment. Following a judgment, the lender may additionally recover the simple interest equivalent of the rate provided in the contract as applied to the amount of the judgment until the date the judgment is paid and satisfied.
(L. 1979 S.B. 305, A.L. 2021 S.B. 106)

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

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

(name, address, and telephone number of lender)

(account number, if any)

(brief identification of credit transaction)

(amount) is the AMOUNT NOW DUE

(date) is the LAST DAY FOR PAYMENT

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

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

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

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

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

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

"If you voluntarily surrender possession of the following specified collateral, you could still owe additional money after the money received from the sale of the collateral is deducted from the total amount you owe.".
(L. 1979 S.B. 305, A.L. 1992 S.B. 705, A.L. 2021 S.B. 106)

408.555. Acceleration, repossession and cancellation restricted - required procedures - borrower's right to cure. - 1. Except as provided in subsection 2 of this section, after a default consisting only of the borrower's failure to make a required payment, a lender, because of that default, may neither accelerate maturity of the unpaid balance nor take possession of or otherwise enforce a security interest until twenty days after a notice of the borrower's right to cure is given both to the borrower and to all cosigners on the credit transaction nor, with respect to an insurance premium loan, give notice of cancellation until thirteen days after a notice of the borrower's right to cure is given; notice shall not be given prior to default. Until expiration of the minimum applicable period after the notice is given, the borrower or cosigner may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the borrower to his rights as though the default had not occurred.

2. This section does not prohibit a borrower from voluntarily surrendering possession of property which is collateral and the lender from thereafter accelerating maturity of the loan and enforcing the note or loan and his security interest in the property at any time after default. If the lender has not already given the notice described in subsection 2 or 3 of section 408.554, he shall upon voluntary surrender of the collateral notify the borrower either personally or by mail at the borrower's last known address that he may owe additional money after the money received from the sale of the collateral is deducted from the total amount owed.

3. No lender is bound by the provisions of subsection 1 of this section if default by the same borrower in connection with the same credit transaction with the same lender has occurred twice notwithstanding the cure of such defaults or three times in the case of a second mortgage loan except as provided in subsection 4 of this section.

4. Default by a borrower on a second mortgage loan may be cured by tendering the current obligation of the borrower at any time prior to the completion of the judicial or extrajudicial proceedings for foreclosure upon such real estate. For the purposes of this section, "current obligation of the debtor" means the aggregate of all installments scheduled to be due at the time of the tender, late charges otherwise permitted by law, and expenses of foreclosures actually incurred by the lender for initiating a bona fide foreclosure, notwithstanding any contractual provision for the acceleration of installment payments. A lender may take no steps to enforce a security interest in real property pursuant to a second mortgage loan until thirty days after notice of the borrower's right to cure is given; notice shall not be given prior to default. Cure restores the borrower's rights under the agreement as though the default had not occurred, except that only three defaults are permitted. This section shall not affect the debtor's right otherwise to redeem such real property under any other provision of law.

(L. 1979 S.B. 305, A.L. 1983 S.B. 70, A.L. 1992 S.B. 705, A.L. 2006 S.B. 892)

408.556. Actions arising from default, contents of petition - default judgment requires sworn testimony - recovery of unpaid balances. - 1. In any action brought by a lender against a borrower arising from default, the petition shall allege the facts of the borrower's default, facts sufficient to show compliance with the provisions of sections 400.9-601 to 400.9-629, RSMo, which provisions are hereby deemed applicable to all credit transactions, with respect to any sale or other disposition of collateral for the credit transaction, the amount to which the lender is entitled, and an indication of how that amount was determined.

2. A default judgment may not be entered in the action in favor of the lender unless the petition is verified by the lender, or sworn testimony, by affidavit or otherwise, is adduced showing that the lender is entitled to the relief demanded.

3. If a lender takes possession or voluntarily accepts surrender of goods in which the lender has a purchase money security interest to secure a credit transaction in the principal amount of less than five hundred dollars, the borrower is not liable to the lender for the unpaid balance.

4. Following any disposition of collateral pursuant to the provisions of sections 400.9-601 to 400.9-629, RSMo, the lender shall be entitled to recover from the borrower the deficiency, if any, only if the amount financed in the transaction was more than five hundred dollars and the amount remaining unpaid at the time of default is three hundred dollars or more.

(L. 1979 S.B. 305, A.L. 1983 S.B. 70 , A.L. 2002 S.B. 895)

408.557. Notice required before deficiency action may be commenced. - When a lender sells or otherwise disposes of collateral in a transaction in which an action for a deficiency may be commenced against the borrower, prior to bringing any such action or upon written request of the borrower, the lender shall give the borrower the notice provided in section 400.9-614 for consumer goods transactions or section 400.9-613 for all other transactions that are not consumer goods transactions.

(L. 1979 S.B. 305, A.L. 2002 S.B. 895)

408.558. Security interests not to be taken, when. - 1. No security interest, other than a purchase money security interest, may be taken or acquired in household furnishings, appliances, or clothing of the borrower or his dependents as security for a loan if the amount financed is less than five hundred dollars.

2. No security interest may be taken or acquired in goods as security for a credit transaction in the principal amount of less than one hundred fifty dollars.

(L. 1979 S.B. 305)

408.560. Unenforceable provisions in note or credit contract. - The following provisions when contained in any note or credit contract or the contract of any guarantor of a credit transaction shall be void and unenforceable:

(1) A power of attorney to confess judgment;

(2) An assignment of wages;

(3) A waiver or limitation of any exemption given by law to the borrower exempting the borrower's property from attachment or execution, except insofar as the waiver or limitation applies to property in which the lender has been granted a security interest to secure the credit transaction;

(4) A security interest in consumer goods which are identified only as a general class of goods, such as "household goods" or "furniture"; and

(5) A waiver of any right of action against the lender or his assignee or other person acting on behalf of the lender in the collection of payments under the contract or in the repossession of goods.

(L. 1979 S.B. 305)

408.562. Damages recoverable for violation. - In addition to any other civil remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

(L. 1979 S.B. 305)

RESIDENTIAL REAL ESTATE LOANS

408.570. Definitions. - Unless otherwise clearly indicated by the context, the following words and terms as used in sections 408.570 to 408.600 shall mean:

(1) **"Department"**, the Missouri department of commerce and insurance;

(2) **"Director"**, the director of the department of commerce and insurance;

(3) **"Division director"**, the appropriate director of the division of finance or the division of credit unions of the department of commerce and insurance;

(4) **"Financial institution"**, a bank, savings and loan association, credit union, consumer credit lender, mortgage banker, or any other association or institution which:

(a) Operates a place of business in Missouri; and

(b) As part of its business, makes residential real estate loans;

(5) **"Residential real estate"**, any real estate used or intended to be used as a residence by not more than four families;

(6) **"Residential real estate loan"**, a loan made for the acquisition, construction, repair, rehabilitation or remodeling of residential real estate or any loan secured by residential real estate. The term shall include any loan made to refinance or prepay in full or in part any such loan;

(7) **"State financial institution"**, any financial institution other than a national banking association, a federal savings and loan association, and a federal credit union;

(8) **"Type"** of residential real estate loan, conventional loans, construction loans, loans insured by the Federal Housing Administration, loans guaranteed by the Veterans Administration, home improvement loans.

(L. 1979 S.B. 305, A.L. 1994 H.B. 1165, A.L. 2008 S.B. 788)

408.575. Denial of loans prohibited, when, reasons for. - It shall be unlawful for any financial institution, or any subsidiary or agent thereof, to deny a residential real estate loan to a person because of any of the following factors or to discriminate against any applicant for a residential real estate loan with respect to any aspect of the loan transaction because of any of the following factors:

(1) The race, color, religion, national origin, handicap, age, marital status, or sex, of the applicant or the race, religion or national origin of persons living in the vicinity of the residential real estate;

(2) The specific geographic location of the residential real estate in such financial institution's local community as defined by it pursuant to the Community Reinvestment Act (12 U.S.C. 2901 et seq.) and the rules and regulations promulgated thereunder. Any state financial institution not regulated by the Community Reinvestment Act shall, subject to the approval of the appropriate division director, delineate its local community for the purposes of this section and shall make such delineation available to the public

upon request at each office where the financial institution accepts applications for residential real estate loans;

(3) The age of the residential real estate or the age of structures in the immediate vicinity of the residential real estate.

(L. 1979 S.B. 305)

408.580. Applications to be accepted - written reasons for rejection required - display of statute required - retention of records - rulemaking, procedure. - 1. No state financial institution shall refuse to provide, upon request, an application form or refuse to accept or otherwise impede the making of a written application for a residential real estate loan.

2. On receipt of a written application for a loan, every state financial institution shall provide the applicant with a written statement of the amount and purpose of each charge of the institution for the processing of the application.

3. On receipt of an amount required by the state financial institution for processing of the loan, said institution shall cause the application to be processed to final determination. If the application is rejected, said institution shall state in writing to the applicant its reason or reasons for such rejection.

4. In the event that a state financial institution, at any time, is not originating or purchasing residential real estate loans of the type for which application is made other than to meet commitments not made in violation of the provisions of sections 408.570 to 408.600 previously made for such loans, that institution may satisfy the requirements of subsections 1, 2, and 3 of this section by delivering to each prospective applicant for such loan a written statement to that effect signed by a representative of the institution.

5. Every state financial institution shall prominently display in the lobby of each of its offices, a statement of the language of subsections 1, 2, 3, and 4 of this section and a statement that the annual report of the division director made in accordance with the provisions of section 408.590 is available at the division office, on a form approved by the division director who regulates such institution.

6. Every state financial institution shall maintain a copy of each document received or delivered under the provisions of subsections 1, 2, 3, and 4 of this section for a period of not less than twenty-five months which period may be extended by order of the division director who regulates such institution. Applications for which the processing fee is not tendered or which are rejected by a state financial institution shall be segregated in the records of the institution and shall be maintained with a copy of each document originated, received or delivered regarding such application.

7. Documents required to be received, maintained or delivered by subsections 1, 2, 3, and 4 of this section may be on a form provided by the state financial institution subject to the disapproval of the division director who regulates such institution provided that each division director shall to the extent possible authorize documents otherwise required by law to be used to effect the purposes of this section.

8. A state financial institution which maintains one or more full service permanent offices in any county or city not within a county for the receipt of deposits shall accept for processing loan applications in at least one office within such county or city not within a county.

9. The division director regulating such state financial institution may issue such regulations as are necessary to carry out the purposes of this section. 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.

(L. 1979 S.B. 305, A.L. 1994 H.B. 1165, A.L. 1995 S.B. 3)

408.585. Limitation on requirements of sections 408.570 to 408.600. - 1. No provision of sections 408.570 to 408.600 shall be construed to require any financial institution to make any residential real estate loan contrary to sound underwriting practices which shall include but not be limited to the following:

(1) The credit worthiness of the applicant; and

(2) The market value of the residential real estate proposed as security for the loans.

2. A financial institution may employ different loan application procedures for loans to purchase or construct new dwellings as opposed to the purchase of previously occupied dwellings.

(L. 1979 S.B. 305)

408.590. Division directors, report to governor and department director, contents. - 1. As to the state financial institutions under the supervision of the respective divisions, each division director shall report annually to the governor and the director of the department, with regard to each county or city with a population in excess of two hundred fifty thousand the following:

(1) The number and type of violations of sections 408.570 to 408.600 which are found to have occurred, a statement of the action or actions taken to enforce the provisions of said sections, and the names of the financial institutions which have been found upon a hearing to have violated the provisions of said sections; and

(2) The number and nature of all complaints received by the department or division regarding alleged violations of any provision of sections 408.570 to 408.600 and the action taken on each complaint by the division.

2. This report shall be maintained by each division as a public document for a period of five years.

(L. 1979 S.B. 305, A.L. 2013 H.B. 329 merged with S.B. 235)

408.595. Financial institutions to make other annual report, contents. - Not later than sixty days following the close of each fiscal year, every state financial institution which accepts savings deposits shall certify to the appropriate division director the total savings deposits of the institution accepted by the institution in the state of Missouri as of the close of the fiscal year, and the total amount of the institution's investments in loans, other than loans originated in the state of Missouri and in negotiable instruments other than loans.

(L. 1979 S.B. 305)

408.600. Division directors to enforce provisions of sections 408.570 to 408.600 - complaints, how handled - hearings - remedies. - 1. Each division director shall enforce the provisions of sections 408.570 to 408.600. With respect to state financial institutions which he supervises, licenses or charters, each division director shall utilize the powers granted him under the general statutory authority by which he regulates, supervises, licenses, or charters such institutions, as well as the powers granted him by sections 408.570 to 408.600. The director of the division of finance shall enforce the provisions of sections 408.570 to 408.600 as they pertain to state financial institutions not supervised, licensed or chartered by a division director, and shall in that enforcement have such powers as are granted in said sections. The enforcement powers granted by subsections 2 through 5 of this section shall be utilized by the director of the division of finance concerning national banks, by the director of the division of finance concerning federal savings and loan associations, and by the director of credit unions concerning federal credit unions.

2. Any person who alleges to have been aggrieved as a result of a violation of section 408.575 or 408.580 may file a complaint with the appropriate division director. Within ninety days of the receipt of such complaint, the division director shall determine whether there is any reason to believe that a violation of section 408.575 or 408.580 has occurred. If the division director determines that there is such reason, then he shall undertake to resolve the complaint by negotiation or he shall conduct a hearing in accordance with the provisions of subsection 3 of this section, except that the hearing shall be held in the locality where the alleged violation occurred.

3. If the division director has reason to believe that a violation of section 408.575 or 408.580 has occurred or does exist, the division director shall conduct a hearing in accordance with chapter 536. If the evidence establishes a violation of any provision of section 408.575 or 408.580, the division director may issue a cease and desist order stating specifically the unlawful practice to be discontinued, which order shall be served personally, or by certified mail. The decision of the division director shall be appealable directly to the circuit court pursuant to chapter 536.

4. If, after an order of the division director has become final, the director believes a violation of any provision of the order has occurred, he may seek an injunction to prohibit such violations in any court of competent jurisdiction. For each violation of such injunction, the court may assess a fine which may be recovered with costs by the state in any court of competent jurisdiction in an action to be prosecuted by the attorney general.

5. The remedies provided by this section shall not be interpreted as exclusive remedies but shall be in addition to remedies otherwise available to the director or to any individual damaged by a violation of sections 408.570 to 408.600.

(L. 1979 S.B. 30, A.L. 2013 H.B. 329 merged with S.B. 235)

RIGHT TO FINANCIAL PRIVACY ACT

408.675. Citation of law - definitions. - 1. Sections 408.675 to 408.700 shall be known and may be cited as the "Missouri Right to Financial Privacy Act".

2. For the purposes of sections 408.675 to 408.700, following terms mean:

(1) **"Customer"**, any person or his authorized representative who utilized services of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in such person's name;

(2) **"Financial institution"**, bank, savings and loan association, trust company, credit union, consumer credit lender, consumer finance institution, persons who act as lender on loans governed by sections 408.100 and 408.120 to 408.190, persons who are sellers under a retail time contract or retail time transactions governed by sections 408.250 to 408.370, and any other persons, including, but not limited to, stockbrokers and brokerage firms, which accept money for deposit to an account on which checks may be drawn by the owner of such account;

(3) **"Financial record"**, an original, a copy, or information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(4) **"Government authority"**, any agency or department of the state of Missouri or any agent thereof;

(5) **"Law enforcement inquiry"**, a lawful investigation, official proceeding, or grand jury proceeding relating to the commission of any crime;

(6) **"Subpoena"**, a judicial subpoena, an administrative subpoena, or other process expressly authorized by law;

(7) **"Supervisory agency"**, any agency or department of Missouri having statutory authority to examine the financial condition or business operations of a financial institution;

(8) **"Government investigation",** a lawful proceeding inquiring into a violation of any civil statute or any valid regulation, rule, or order issued pursuant thereto.

(L. 1989 H.B. 82 §§ 1, 2)

408.677. Government access to records, when - requirements. - Except as provided in section 408.690, no government authority may have access to or obtain copies of the information contained in the financial records of any customer unless the financial records are reasonably described and:

(1) Such customer has authorized such disclosure in accordance with section 408.682;

(2) Such financial records are disclosed in response to a subpoena which meets the requirements of section 408.683; or

(3) Such financial records are disclosed in response to a written request which meets the requirements of section 408.683.

(L. 1989 H.B. 82 § 3)

408.680. Financial institution may not disclose, exceptions, requirements. - 1. A financial institution, or officer, employee, or agent thereof shall not provide to any government authority access to the financial record of any customer except in accordance with the provisions of sections 408.675 to 408.700.

2. A financial institution shall not release the financial records of a customer until the government authority seeking such records gives notice in writing to the financial institution that it has complied with the applicable provisions of sections 408.675 to 408.700.

(L. 1989 H.B. 82 § 4)

408.682. Customer authorization, requirements. - 1. A customer may authorize disclosure of his financial records if he furnishes to the financial institution and to the government authority seeking to obtain such disclosure a signed and dated statement which:

(1) Authorizes such disclosure for such period as may be agreed upon;

(2) States that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) Identifies the financial records which are authorized to be disclosed;

(4) Specifies the purpose and the government authority to which such records may be disclosed; and

(5) States the customer's rights under sections 408.675 to 408.700.

2. Such authorization shall not be required as a condition of doing business with any financial institution.

3. The customer has the right to obtain a copy of the information which shall be disclosed to a government authority pursuant to sections 408.675 to 408.700, and the identity of the government authority to which such disclosure was made.

(L. 1989 H.B. 82 § 5)

408.683. Subpoena, government may obtain records with, when - procedure - notice required. - A government authority may obtain financial records pursuant to a subpoena if:

(1) There is reason to believe that the records sought are relevant to a government investigation;

(2) A copy of the subpoena has been served upon the customer or mailed to his last known address on or before the date on which the subpoena is served on the financial institution together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena (or other process) are being sought by the (agency or department) in accordance with the Missouri Right to Financial Privacy Act for the following purpose: (state purpose with reasonable specificity)

If you desire that such records or information not be made available, you must:

1. State in writing that you are the customer whose records are being requested and give the reasons you believe the records are not relevant to the law enforcement inquiry stated in this subpoena or any other basis for objecting to the release of the records;

2. File the statement by mailing or delivering it to the clerk of the court which issued or has the power to enforce the subpoena;

3. Serve the government authority requesting the records by mailing or delivering a copy of your statement to it at the address stated in the notice; and

4. Be prepared to go to court or to the issuing authority and present your position in further detail. You do not need to have a lawyer to represent yourself, although you may wish to employ one to represent you and protect your rights. If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate government investigations.";

and

(3) Ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a statement or a motion to quash in an appropriate court, or the customer challenge provisions of section 408.686 have been complied with.

(L. 1989 H.B. 82 § 6)

408.685. Delay of notice, allowed when - postdisclosure notice, form of. - 1. Upon application of the government authority, the customer notice required under section 408.682, 408.683, or 408.689 may be delayed by order of circuit court of Cole County or the circuit court for the principal office of the governmental agency if the court finds that:

(1) The investigation being conducted is within the lawful jurisdiction of the government authority seeking the financial records;

(2) There is reason to believe that the records being sought are relevant to a legitimate government investigation; and

(3) There is reason to believe that such notice will result in:

(a) Destruction of or tampering with evidence; or

(b) Intimidation of potential witnesses; or

(c) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding.

An application for delay must be made with reasonable specificity.

2. If the court makes the findings required in subsection 1 of this section, it may enter an order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made; except that, if the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a person or group of persons, the court may specify that the delay be indefinite.

3. Extensions of the delay of notice of up to ninety days each may be granted by the court upon application, but only in accordance with this section.

4. Upon expiration of the period of delay of notification under this section, the customer shall be served with or mailed a copy of the process or request together with the following notice:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Missouri Right to Financial Privacy Act that such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose in reasonable specificity).".

5. When access to financial records is obtained pursuant to section 408.692, the government authority shall, unless a court has authorized delay of notice, as soon as practicable after such records are obtained, serve upon the customer, or by mail to his last known address a copy of the request to the financial institution together with the following notice:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by the (agency or department) under the Missouri Right to Financial Privacy Act on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state purpose in reasonable specificity).".

6. Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be filed with the court. Upon petition by the customer to whom such records pertain the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection 1 of this section.

(L. 1989 H.B. 82 § 7)

408.686. Challenge to subpoena - procedure, appeals. - 1. Within ten days of service or within fourteen days of mailing of a subpoena, a customer may file a motion to quash the subpoena, or an action to enjoin a government authority from obtaining financial records pursuant to a written process. A motion to quash the subpoena shall be filed in the court which issued the subpoena or with the court that has the power to enforce the subpoena. Such motion or application shall contain a sworn statement:

(1) Stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) Stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the government authority in its notice, or that there has not been substantial compliance with the provisions of sections 408.675 to 408.700.

Service shall be made under this section upon a government authority by delivering or mailing a copy of the papers to the address in the notice the customer received.

2. The government authority may file a response, which may be the subject of a protective order if the government includes in its response the reason such order is appropriate. The court may conduct such additional proceedings as it deems appropriate.

3. If the court finds that there is substantial and competent evidence that the government investigation is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion and order such process enforced; provided, the court may order a limitation on the subpoena as a condition of enforcement. If the court finds that there is not such evidence that the law enforcement inquiry is legitimate, or that there is no such evidence that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of sections 408.675 to 408.700, it shall order the process quashed or shall enjoin the government authority's subpoena.

4. Any appeal from an order issued under this section shall be in accordance with the Missouri rules of civil procedure.

5. The governmental authority obtaining the records shall promptly notify the customer if a determination has been made that no legal proceeding against him is contemplated. If no such decision has been made within one hundred eighty days from the date of the order granting access to the financial records, the governmental authority shall so notify the court and continue such notification at such intervals thereafter as the court may order.

6. The challenge procedures of sections 408.655 and 408.675 to 408.700 constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to sections 408.675 to 408.700.

7. Nothing in sections 408.675 to 408.700 shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a government authority under existing law.

(L. 1989 H.B. 82 § 8)

408.687. Financial institution to assemble records upon subpoena - delivery of records, when. - Upon receipt of a request for financial records made by a government authority under section 408.683, the financial institution shall, unless otherwise provided by law proceed to assemble the records requested and must be prepared to deliver the records to the government authority upon receipt of the notice required under subsection 2 of section 408.680.

(L. 1989 H.B. 82 § 9)

408.689. Transfer of records to additional agency, allowed when - notice. - 1. Financial records originally obtained pursuant to sections 408.675 to 408.700 shall not be transferred to another agency or department unless the transferring agency or department makes a written finding that there is reason to believe that the records are relevant to a

legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department.

2. When financial records subject to sections 408.675 to 408.700 are transferred pursuant to this section the transferring agency or department shall within fourteen days send to the customer the following notice:

"Copies of, or information contained in, your financial records lawfully in possession of (the agency or department) have been furnished to (the agency or department) pursuant to the Missouri Right to Financial Privacy Act for the following purpose (state with reasonable specificity). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Missouri Right to Financial Privacy Act. ".

3. Notwithstanding subsection 2 of this section, notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice, or if the receiving agency or department obtains a court order authorizing a delay in notice. Upon the expiration of any such period of delay, the transferring agency or department shall serve the customer the notice specified in subsection 2 of this section and the agency or department that obtained the court order authorizing a delay in notice shall serve the notice.
(L. 1989 H.B. 82 § 10)

408.690. Nonprohibited disclosure activities. - 1. Nothing in sections 408.675 to 408.700 prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in sections 408.675 to 408.700 prohibits the transfer of a customer's financial records needed by counsel for a government authority to defend an action brought by the customer. Nothing in sections 408.675 to 408.700 shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee of the general assembly.

2. Nothing in sections 408.675 to 408.700, prohibits the exchange of financial records or other information with respect to a financial institution among and between the supervisory agencies of the federal Financial Institutions Examination Council and the Missouri division of finance.

3. Nothing in sections 408.675 to 408.700 prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

4. Nothing in sections 408.675 to 408.700 prohibits examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution.

5. Nothing in sections 408.675 to 408.700 shall prohibit the disclosure of financial records or information required to be reported in accordance with any federal statute or rule promulgated thereunder.

6. Nothing in sections 408.675 to 408.700 prohibits disclosure if the financial records are sought by a government authority under the Missouri rules of civil or criminal procedure or comparable rules of other courts in connection with litigation to which a government authority is a party.

7. Nothing in sections 408.675 to 408.700 shall prohibit disclosure of financial records to the department of social services pursuant to sections 660.325 to 660.355, RSMo, or section 578.387, RSMo.

8. Nothing in sections 408.675 to 408.700 shall apply to requests made by the department of social services of the state of Missouri to obtain information from the federal parent locator service of the United States Department of Health and Human Services.

9. Nothing in sections 408.675 to 408.700 shall apply to prohibit a financial institution from complying with a properly served summons to garnishee or to written interrogatories exhibited to a financial institution which has been properly summoned as garnishee.

10. Nothing in sections 408.675 to 408.700 shall apply to prohibit a financial institution from complying with a properly served income withholding order issued pursuant to section 452.350 or 454.505, RSMo.

11. The requirements of sections 408.675 to 408.700 shall not apply when a government authority by a means described in section 408.677 and for a legitimate government investigation is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

12. Nothing in sections 408.675 to 408.700 shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a government authority that such institution, officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation.

Such information may be disclosed notwithstanding any law, or regulation of this state or political subdivision of this state to the contrary. Any financial institution, officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of this state or political subdivision of this state for such disclosure or for any failure to notify the customer of such disclosure.

13. Nothing in sections 408.675 to 408.700 shall preclude a financial institution, as an incident to perfecting a security interest or proving a claim in bankruptcy, or collecting on a debt owing to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record relevant to such action to any court of competent jurisdiction or government authority. Nothing in sections 408.655 and 408.675 to 408.700 shall preclude a financial institution as an incident to processing an application for assistance to a customer in the form of a government loan, loan guaranty, loan insurance agreement, administering or processing a default on a government guaranteed or insured loan, from initiating contact with an appropriate government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under such loan, loan guaranty, or loan insurance agreement.

14. Nothing in sections 408.675 to 408.700 shall preclude a governmental authority from obtaining information that is a part of a public record without regard to sections 408.675 to 408.700 even though such information may have been derived from a financial institution.

15. Nothing in sections 408.675 to 408.700 will preclude a governmental authority acting pursuant to sections 447.500 to 447.585, RSMo, from obtaining any information required by such sections for the purpose of administering sections 447.500 to 447.585, RSMo, without regard to sections 408.675 to 408.700; provided however, any information so derived shall not be used for any other purpose.

16. Nothing in sections 408.675 to 408.700 shall apply to a law enforcement inquiry or to a government authority or government employee engaged in a law enforcement inquiry.

17. Nothing in sections 408.675 to 408.700 shall apply to any requests made by any United States agency or department or any official employee or agent thereof authorized to obtain information from any financial institution if such agency or agencies are authorized by the federal Financial Privacy Act of 1978, as amended, to receive such information without compliance with the federal Financial Privacy Act of 1978, as amended.

18. The requirements of sections 408.675 to 408.700 shall not apply to the state auditor or any person appointed by him when obtaining information pursuant to section 29.235, RSMo.

19. Nothing in sections 408.655 and 408.675 to 408.700 shall apply to requests made by the Division of Employment Security pursuant to chapter 288, RSMo.

20. Nothing in sections 408.675 to 408.700 shall apply to examinations or audits of preneed trust accounts or joint accounts performed by staff of the division of professional registration when ordered by the state board of embalmers and funeral directors under the provisions of chapter 436, RSMo.

(L. 1989 H.B. 82 § 11)

408.692. Law not applicable to government authority, when - procedure. - 1. Except for sections 408.680 and 408.700 nothing in sections 408.675 to 408.700 shall apply when financial records are sought by a government authority:

(1) In connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(2) In connection with the authority's consideration or administration of assistance to the customer in the form of a government loan, loan guaranty, or loan insurance program.

2. When financial records are sought pursuant to this section, the government authority shall submit to the financial institution the notice required by subsection 2 of section 408.680. For access pursuant to subdivision (2) of subsection 1 of this section, no further certification shall be required for the subsequent access by the applicable government authority during the term of the loan, loan guaranty, or loan insurance agreement.

3. After August 28, 1989, whenever a customer applies for participation in a government loan, loan guaranty, or loan insurance program, the government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

4. Financial records obtained pursuant to this section may be used only for the purpose for which they were originally obtained, and may

be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that:

(1) Nothing in sections 408.675 to 408.700 prohibits the use or transfer of a customer's financial records needed by counsel representing a government authority in a civil action arising from a government loan, loan guaranty, or loan insurance agreement;

(2) Nothing in sections 408.675 to 408.700 prohibits a government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the government resulting from a customer's default.

5. Notification that financial records obtained pursuant to this section which may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of sections 408.675 to 408.700.

6. Each financial institution shall keep a notation of each disclosure made pursuant to subdivision (2) of subsection 1 of this section, including the date of such disclosure and the government authority to which it was made. The customer shall be entitled to inspect this information. Except for sections 408.696 and 408.700, nothing in sections 408.675 to 408.700 shall apply to any subpoena or court order issued in connection with proceedings before a grand jury.

7. Nothing in sections 408.675 to 408.700 shall prohibit a government authority from obtaining financial records from a financial institution if the government authority determines that delay in obtaining access to such records would create imminent danger of:

(1) Physical injury to any person;

(2) Serious property damage; or

(3) Flight to avoid prosecution.

Within five days of obtaining access to financial records under this subsection the government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the government authority setting forth the grounds for the emergency access. The government authority shall thereafter comply with the notice provisions of subsection 5 of section 408.685. The government authority shall compile an annual tabulation of the occasions in which this subsection was used.
(L. 1989 H.B. 82 § 12)

408.693. Fee paid to financial institution, amount, how determined. - Except for records obtained pursuant to section 408.690, a government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by sections 408.675 to 408.700 a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The rates established by the board of governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.
(L. 1989 H.B. 82 § 13)

408.695. Statute of limitations. - An action to enforce any provisions of sections 408.675 to 408.700 may be brought in the circuit court within three years from the date on which the violation occurs or on the date of discovery of such violation, whichever is later.
(L. 1989 H.B. 82 § 14)

408.696. Civil liability for violation, amount - disciplinary action against agency employee, when - good faith a valid defense, when - exclusive remedy. - 1. Any financial institution or an agency or department of the state of Missouri obtaining or disclosing financial records or information contained therein in violation of sections 408.675 to 408.700 is liable to the customer to whom such records relate in an amount equal to the sum of:

(1) One thousand dollars, without regard to the volume of records involved;

(2) Any actual damages sustained by the customer as a result of the disclosure; and

(3) In the case of any successful action, to enforce liability under this section, the costs of the action together with reasonable attorney's fees may be allowed by the court.

2. Whenever the court determines that any employee of an agency or department of the state of Missouri has violated any provision of sections 408.675 to 408.700 and the court finds

that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the agency or department supervising said violator shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The agency or department after investigation and consideration of the evidence submitted shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative.

3. Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to sections 408.675 to 408.700 in good faith reliance upon a notice by any government authority shall not be liable to the customer or any other person for such disclosure.

4. The remedies and sanctions described in sections 408.675 to 408.700 shall be the only judicially recognized remedies and sanctions for violations of sections 408.675 to 408.700.

(L. 1989 H.B. 82 § 15)

408.697. Injunctive relief, allowed when. - In addition to any other remedy contained in sections 408.675 to 408.700, injunctive relief shall be available to require that the procedures of sections 408.675 to 408.700 are complied with. In the event of a successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

(L. 1989 H.B. 82 § 16)

408.699. Statute of limitations, tolled when. - If any individual files a motion or application under sections 408.655 and 408.675 to 408.700 which has the effect of delaying the access of a government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

(L. 1989 H.B. 82 § 17)

408.700. Subpoena issued under authority of grand jury, records, use of. - Financial records relating to a customer obtained from a financial institution pursuant to a subpoena issued under the authority of a grand jury:

(1) Shall be returned and actually presented to the grand jury;

(2) Shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by the applicable Missouri rules of criminal procedure;

(3) Shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subdivision (2) of this section; and

(4) Shall not be maintained, or a description of the contents of such records shall not be maintained by any government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rules 5 and 6 of the Missouri rules of criminal procedure.

(L. 1989 H.B. 82 § 18)

CHAPTER 425

DEBT ADJUSTERS AND COLLECTION AGENCIES

DEBT ADJUSTERS

COLLECTION AGENCIES

CROSS REFERENCE

Hospitals, public clinics, health insurance direct payment with or without assignment, when, 376.778

DEBT ADJUSTERS

425.010. Definitions. - As used in sections 425.010 to 425.043, the following terms mean:

(1) **"Debt adjuster"**, a person who provides or offers to provide debt relief services for a consideration;

(2) **"Debt management plan"** or **"DMP"**, a written agreement or contract between a debt adjuster and a debtor whereby the debt adjuster, in return for payment by the debtor of no more than reasonable consideration, will provide debt relief services that contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency;

(3) **"Debtor"**, an individual or individuals jointly and severally or jointly or severally indebted;

(4) **"Debt relief services"**, any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a debtor and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector;

(5) **"Debt settlement plan"** or **"DSP"**, a written agreement or contract between a debt adjuster and a debtor whereby the debt adjuster, in return for payment by the debtor of consideration, will provide debt relief services that contemplate that creditors will settle debts for less than the principal amount of the debt;

(6) **"Reasonable consideration"**, a fee to cover the cost of administering a debt management plan, not to exceed:

(a) Fifty dollars for an initial or set-up fee or charge for establishing a DMP; and

(b) The greater of thirty-five dollars per month or eight percent of the amount distributed monthly to creditors under such DMP.

(L. 1963 p. 646 § 1, A.L. 2007 H.B. 329, A.L. 2011 H.B. 661)

425.020. Debt adjusting - penalty. - Any person who acts or offers to act as a debt adjuster in this state other than under a debt management plan or debt settlement plan is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(L. 1963 p. 646 § 1, A.L. 2007 H.B. 329, A.L. 2011 H.B. 661)

425.025. Debt management plan or debt settlement plan may be administered free of charge. - Nothing in sections 425.010 to 425.043 shall be construed to prevent any individual or organization from administering a debt management plan or debt settlement plan free of charge.

(L. 2007 H.B. 329, A.L. 2011 H.B. 661)

425.027. Surety bond for debt adjusters required, amount. - Each initial license application shall be accompanied by a surety bond in the principal sum in accordance with the following categories:

(1) Fifty thousand dollars if the applicant declares that the operation will handle no consumer monies; or

(2) One hundred thousand dollars otherwise.

The bond shall be for the benefit of any debtor who is damaged by the debt adjuster's breach of the debt management plan or debt settlement plan or the debt adjuster's failure to properly administer debtor funds collected or disbursed under the debt management plan or debt settlement plan. The director of the division of finance may investigate any debtor complaint and make claim on a bond for the benefit of a debtor or release the bond to a debtor to make a claim.
(L. 2007 H.B. 329, A.L. 2011 H.B. 661)

425.030. Circuit court may enjoin, appoint receiver. - The circuit court shall have power, in an action brought in the name of the state by the attorney general, to enjoin any person from acting or offering to act as a debt adjuster; and, in the action, may appoint a receiver for the property and money employed in the transaction of business by the person as a debt adjuster, to insure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors.
(L. 1963 p. 646 § 1)

425.040. Who not to be considered debt adjusters. - The following persons shall not be considered debt adjusters for the purposes of sections 425.010 to 425.043:

(1) Any attorney at law of this state;

(2) Any person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts;

(3) Any person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this state or of the United States;

(4) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; and

(5) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in providing debt relief services.
(L. 1963 p. 646 § 1, A.L. 2011 H.B. 661)

425.043. Required disclosures - misrepresentations and payment prohibited - funds held, requirements. - 1. Before a debtor consents to pay for goods or services offered, debt adjusters shall disclose truthfully, in a clear and conspicuous manner, the following material information:

(1) The amount of time necessary to achieve the represented results, and the extent that the debt relief service may include a settlement offer to any of the debtor's creditors or debt collectors, the time by which the debt adjuster will make a bona fide settlement offer to each of them;

(2) To the extent that the debt relief service may include a settlement offer to any of the debtor's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the debtor shall accumulate before the debt adjuster will make a bona fide settlement offer to each of them;

(3) To the extent that any aspect of the debt relief service relies upon or results in the debtor's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors or debt collectors, and may increase the amount of money the debtor owes due to the accrual of fees and interest; and

(4) To the extent that the debt adjuster requests or requires the debtor to place funds in an account at an insured financial institution, that the debtor owns the funds held in the account, the debtor may withdraw from the debt relief service at any time without penalty, and, if the debtor withdraws, the debtor shall receive all funds in the account, other than funds earned by the debt adjuster, within seven business days of the debtor's request.

2. A debt adjuster shall not misrepresent, directly or by implication, any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a debtor may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the

debtor shall accumulate before the debt adjuster will initiate attempts with the debtor's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the debtor's debt; the effect of the service on the debtor's creditworthiness; the effect of the service on collection efforts of the debtor's creditors or debt collectors; the percentage or number of debtors who attain the represented results; and whether a debt relief service is offered or provided by a nonprofit entity.

3. A debt adjuster shall not receive payment of any fee or consideration for any debt relief service until and unless:

(1) The debt adjuster has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt under a debt management plan or debt settlement plan;

(2) The debtor has made at least one payment under such debt management plan or debt settlement plan; and

(3) The fee or consideration for settling each individual debt enrolled in a debt settlement plan shall either:

(a) Bear the same proportional relationship to the total fee for settling the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are amounts owed at the time the debt was enrolled on the debt relief service; or

(b) Be a percentage of the amount saved as a result of the settlement. The percentage charged shall not change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the debt relief service and the amount actually paid to satisfy the debt.

4. Nothing in this section prohibits requesting or requiring the debtor to place funds in an account to be used for the debt adjuster's fees for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of debt, provided that:

(1) The funds are held in an account at an insured financial institution;

(2) The debtor owns the funds held in the account and is paid accrued interest on the account, if any;

(3) If the debt adjuster does not administer the account, the entity administering the account is not owned or controlled by, or in any way affiliated with, the debt adjuster;

(4) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business by the debt adjuster; and

(5) The debtor may withdraw from the debt relief service at any time without penalty, and shall receive all funds in the account, other than funds earned by the debt adjuster in compliance with subdivision (3) of subsection 3 of this section, within seven business days of the debtor's request.

(L. 2011 H.B. 661)

COLLECTION AGENCIES

425.300. Real party in interest on assignment of claim for billing, collection, bringing suit, attorney required to appear in court - court may sever actions. - Collection agencies may take assignment of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own and the claimant's names thereon, provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a duly authorized and licensed attorney at law. Upon good cause being shown, a court may sever any actions brought under this section.

(L. 1992 S.B. 688 § 5)

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CHAPTER 432

CONTRACTS REQUIRED TO BE IN WRITING

Sec.

UNIFORM ELECTRONIC TRANSACTIONS ACT

CROSS REFERENCES

Conveyances by minor binding, when, 442.080
Ratification of contracts of minors, how and when made, 431.060

432.010. Statute of frauds - contracts to be in writing. - No action shall be brought to charge any executor or administrator, upon any special promise to answer for any debt or damages out of his own estate, or to charge any person upon any special promise to answer for the debt, default or miscarriage of another person, or to charge any person upon any agreement made in consideration of marriage, or upon any contract made for the sale of lands, tenements, hereditaments, or an interest in or concerning them, or any lease thereof, for a longer time than one year, or upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized, and no contract for the sale of lands made by an agent shall be binding upon the principal, unless such agent is authorized in writing to make said contract.

(RSMo 1939 § 3354)
Prior revisions: 1929 § 2967; 1919 § 2169; 1909 § 2783

CROSS REFERENCES:

Actions on contract barred, revived by written promise, 516.320
Marriage contracts affecting property to be in writing, acknowledged, 451.220
Powers of attorney to convey real estate, how acknowledged and proved, 442.360

Agreements Not to be Performed in Year

(1961) Plaintiff could not recover in action for breach of oral contract for personal employment since if employment was to be for one year and to commence thirty-seven days after agreement was made it came within the statute of frauds and if employment was for an indefinite period then it was terminable at will and fact that in reliance on agreement plaintiff had quit his job would not estop defendant from denying the contract. Morsinkhoff v. DeLuxe Laundry & Dry Cleaning Co. (A.), 344 S.W.2d 639.

(1973) Held lease required to be in writing by statute of frauds may be rescinded by subsequent oral agreement where unexpired term of lease is less than that period required by the statute for written agreements. Gee v. Nieberg (A.), 501 S.W.2d 542.

(1974) Held that because contract could have been performed within a year it was not barred by statute of frauds. Want v. Century Supply Co. (A.), 508 S.W.2d 515.

Contracts Involving Lands

(1961) Description of real estate in writing as "Vo's bldg" held insufficient under statute. Macy v. Day (A.), 346 S.W.2d 555.

(1961) Where agreement to enter into a lease was partly in writing but omitted a great many matters which were alleged to be in an oral part of the agreement it was not enforceable under the frauds. Frostwood Drugs, Inc. v. Fisher & Frichtel Construction Co. (Mo.), 352 S.W.2d 694

(1962) Plaintiff, buyer, could not recover in action for damages for breach of alleged contract to convey realty against husband and wife, who held the realty as tenants by the entireties, where only the husband had signed the contract and there was no memorandum in writing signed by wife authorizing husband to act as her agent or ratifying his actions. Austin & Bass Builders, Inc. v. Lewis (Mo.), 359 S.W.2d 711.

(1962) Where five year lease contained option provision by which lessee could continue as tenant under same terms and conditions for another five years the rental to be mutually determined by the parties at time of exercise of option, amount of rent to be charged was essential part of the contract and oral agreement thereon was unenforceable and fact that lessee remained in possession for 8 months and paid rent at same rate as previously paid under lease did not exclude option clause from statute of frauds. Rosenberg v. Gas Service Co. (A.), 363S.W.2d 20.

(1967) Mere payment of money as partial performance will not take land sale contract out of statute of frauds. Agreement not to contest will which was fulfilled was sufficient performance to take oral agreement to convey land out of the statute. Alonzo v Laubert (Mo.), 418 S.W.2d 94.

(1968) The statute of frauds applies with equal force to both the purchasers and sellers of real estate. McQueen v. Huelsing (A.), 425 S.W.2d 506.

(1971) Where written contract in evidence described the property in question as 80 acres more or less, gave vendors' name, residence, showed the contract related to dairy farm, and vendors lived on subject farm and owned no other real estate, and contract executed with all parties present on the subject farm agreeing that exact legal description could be supplied later by real estate agent, the contract was sufficient under statute of frauds for purposes of reformation and specific performance. Deulen v. Wilkinson (Mo.), 473 S.W.2d 357.

(1987) Though this section requires that a contract for the sale of real property be evidenced by a writing, it does not require that a rescission of such contract, if such contract is yet executory, be reduced to a writing. Smith v. Mohan, 723 S.W.2d 94 (Mo.App. E.D.).

Evidence

(1960) Evidence held sufficient to show the part performance of oral contract for the sale of land so as to take it out of the statute of frauds. Anderson v. Abernathy (Mo.), 339 S.W.2d 817.

Generally

(1963) No writing or memorandum is required where the promise to assume the debts of another is made to the debtor himself and not to the creditor. Hafford v. Smith (A.), 369 S.W.2d 290.

(1973) Where the leading and main object of defendant's promise to plaintiffs that he would see that they were paid was in his own interest, the promise was not within the statute of frauds. Carvitto v. Ryle (A.), 495 S.W.2d 109.

(1974) Memorandum is sufficient to remove impediment of statute of frauds if it sets out essential terms of agreement. Bayless Building Materials Co. v. Peerless Land Co. (A.), 509 S.W.2d 206.

(1986) A promise need not be reduced to writing under the provisions of this section dealing with promises to answer for the obligation of another person, if main purpose of such promise is to serve the interests of the promisor rather than such other person. Baron v. Lerman, 719 S.W.2d 72 (Mo.App. E.D.).

(1987) It is sufficient to plead full performance of an oral contract to avoid a motion to dismiss under this section. Irwin v. Berrelsmeyer, 730 S.W.2d 302 (Mo.App. E.D.).

Part Performance

(1960) A parol lease for five years and parol agreement to make the lease were within the statute of frauds and fact that lessor made improvements during the first year conditioned upon the lease did not amount to performance that would take the agreement out of the statute of frauds. Newkirk v. Moley (A.), 343 S.W.2d 213.

(1964) Removal of buildings from leased tract by lessors was as referable to written mining lease as to alleged new verbal agreement and lessor's conduct with respect to roads and ditches cut by lessees was nonaction rather than performance and not inconsistent with written lease, and therefore, alleged oral agreement was not taken out of the statute of frauds on ground of performance by lessors. Zink v. Pittsburg & Midway Coal Mining Co. (A.), 374 S.W.2d 158.

(1964) In suit for specific performance of an alleged parol agreement between husband and wife to keep their existing mutual and reciprocal last wills and testaments in force and not revoke them held that there was not part performance on part of wife sufficient to remove the alleged parol agreement from the operation of the statute of frauds. Rookstool v. Neaf (Mo.), 377 S.W.2d 402.

(1968) Anticipatory, preparatory, collateral, and ancillary acts performed in reliance on a verbal contract, generally are not sufficient part performance to call for an exception to the provisions of the statute of frauds; but if the verbal agreement is sufficiently established, the acts are done with the knowledge of the other party, and if the changes in circumstances resulting from such acts are of such nature that the consequences thereof are, or may be, disastrous, the court may enforce the contract, even though the acts are not, strictly speaking, in execution of the contract. Pointer v. Ward (Mo.), 429 S.W.2d 269.

(1986) A promise need not be reduced to writing under the provisions of this section dealing with promises to answer for the obligation of another person, if main purpose of such promise is to serve the interests of the promisor rather than such other person. Baron v. Lerman, 719 S.W.2d 72 (Mo.App.).

(1987) It is sufficient to plead full performance of an oral contract to avoid a motion to dismiss under this section. Irwin v. Berrelsmeyer, 730 S.W.2d 302 (Mo.App.).

(1987) Though this section requires that a contract for the sale of real property be evidenced by a writing, it does not require that a rescission of such contract, if such contract is yet executory, be reduced to a writing. Smith v. Mohan, 723 S.W.2d 94 (Mo.App.).

<u>432.030. Assignment of wages.</u> - All assignments of wages, salaries or earnings must be in writing with the correct date of the assignment and the amount assigned and the name or names of the party or parties owing the wages, salaries and earnings so assigned; and all assignments of wages, salaries and earnings, not earned at the time the assignment is made, shall be null and void.

(RSMo 1939 § 3356)

Prior revisions: 1929 § 2969; 1919 § 2171

CROSS REFERENCE:

Assignment of wages deemed loan and subject to laws regulating loans and punishing usury, when, 408.210

(1993) Mandatory wage deduction for nonunion school custodial and food service workers' fair share fees for authorized collective bargaining representative is not an assignment of wages within meaning of this section. Schaffer v. Board of Education of St. Louis, 869 S.W.2d 163 (Mo. App. E.D.).

432.040. Representations of credit to be in writing. - No action shall be brought to charge any person upon or by reason of any representation or assurance made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance be made in writing, and subscribed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.
(RSMo 1939 § 3357)
Prior revisions: 1929 § 2970; 1919 § 2172; 1909 § 2785

432.045. Credit agreements, defined - action by debtor on certain credit agreements prohibited unless in writing - contents of written statement requirement - oral modification permitted, when. - 1. For the purposes of this section, the term "credit agreement" means an agreement to lend or forbear repayment of money, to otherwise extend credit, or to make any other financial accommodation.

2. A debtor may not maintain an action upon or a defense to a credit agreement unless the credit agreement is in writing, provides for the payment of interest or for other consideration, and sets forth the relevant terms and conditions, except this subsection shall not preempt other specific statutes that authorize additional protection for consumer credit used in personal, family or household purposes and the limitations on credit agreements in subsection 3 of this section.

3. (1) If a written credit agreement has been signed by a debtor, subsection 2 of this section shall not apply to any credit agreement between such debtor and creditor unless such written credit agreement contains the following language in boldface ten point type:

"Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it."

(2) The provisions of this section shall not apply to credit agreements for personal, family, or household purposes when there is already a written contract governing the transaction, and the debtor and creditor orally agree to defer one or more loan payments or make other credit agreement modifications and such deferrals or modifications are limited in duration to not more than ninety days.

4. Nothing contained in this section shall affect the enforceability by a creditor of any promissory note, guaranty, security agreement, deed of trust, mortgage, or other instrument, agreement, or document evidencing or creating an obligation for the payment of money or other financial accommodation, lien, or security interest.
(L. 1990 H.B. 1788, A.L. 1992 S.B. 688)

432.047. Credit agreements, actions not to be maintained, when - credit agreement defined. - 1. For the purposes of this section, the term "credit agreement" means an agreement to lend or forbear repayment of money, to otherwise extend credit, or to make any other financial accommodation.

2. A debtor party may not maintain an action upon or a defense, regardless of legal theory in which it is based, in any way related to a credit agreement unless the credit agreement is in writing, provides for the payment of interest or for other consideration, sets forth the relevant terms and conditions, and the credit agreement is executed by the debtor and the lender.

3. (1) When a written credit agreement has been signed by a debtor, subsection 2 of this section shall not apply to any credit agreement between such debtor and creditor unless such written credit agreement contains the following language in boldface ten-point type:

"Oral or unexecuted agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable, regardless of the legal theory upon which it is based that is in any way related to the credit agreement. To protect you (borrower(s)) and us (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.".

(2) Notwithstanding any other law to the contrary in this chapter, the provisions of this section shall apply to commercial credit agreements only and shall not apply to credit agreements for personal, family, or household purposes.

4. Nothing contained in this section shall affect the enforceability by a creditor of any promissory note, guaranty, security agreement, deed of trust, mortgage, or other instrument, agreement, or document evidencing or creating

an obligation for the payment of money or other financial accommodation, lien, or security interest.
(L. 2004 H.B. 959, A.L. 2013 S.B. 100)

432.050. Leases, not in writing, operate as estates at will. - All leases, estates, interests of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, made or created by livery and seisin only, or by parole, and not put in writing and signed by the parties so making or creating the same, or their agents lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force.
(RSMo 1939 § 3352)
Prior revisions: 1929 § 2965; 1919 § 2167; 1909 § 2781

(1957) To meet the requirements of this section, a lease may be made up of several writings such as letters, etc., and it is not necessary that all of such writings be signed by lessor and lessee. Midland Realty Co. v. Manzella (A.), 308 S.W.2d 326.

432.060. Leases to be assigned in writing. - No leases, estates, interests, either of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents lawfully authorized by writing, or by operation of law.
(RSMo 1939 § 3353)
Prior revisions: 1929 § 2966; 1919 § 2168; 1909 § 2782

432.070. Contracts, execution of by counties, towns - form of contract. - No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing.
(RSMo 1939 § 3349, A.L. 2005 S.B. 462, A.L. 2007 S.B. 22)
Prior revisions: 1929 § 2962; 1919 § 2164; 1909 § 2778

CROSS REFERENCE:
Execution of county contracts, 50.660

(1961) Where city's "Notice to Bidders" required a lump sum bid for construction of sewerage system "including approximately 18,000 cubic yards of earth work" for lagoon, whereas the completion of the project actually required 36,000 cubic yards of earth, the contractor was entitled to recover in an action which is sui generis but which sounds in tort, and contract statute did not apply. Clark v. City of Humansville, Mo. (A.), 348 S.W.2d 369.
(1963) Where engineers performed services in connection with construction additional to that covered by terms of contract between city and engineers, out-of-pocket expenses incurred by engineers in connection therewith were not payable on ground of emergency situation justifying omission of written contract. Needles v. Kansas City (Mo.), 371 S.W.2d 300.
(1966) The terms of this section are expressly made applicable to counties, and the requirement that the terms of contracts therein referred to be in writing is mandatory and not merely directory. Thies v. St. Louis County (Mo.), 402 S.W.2d 376.
(1967) The requirements of this section are mandatory, not directory, and where there was no express written contract giving a water district exclusive right to furnish and sell water in the district, no such contract can be implied. Jackson Co. Public Water Supply District No. 1 v. Ong Aircraft Corp., 409 S.W.2d 226.
(1970) This section is mandatory and not merely directory. Hoevelman v. Reorganized Sch. D. R. 2 of Crawford Co. (A.), 452 S.W.2d 298.
(1975) Held that ordinance which authorized mayor to enter contract with state highway commission but silent as to costs or details was not a valid authorization. State ex rel. State Highway Commission v. City of Sullivan (A.), 529 S.W.2d 186.
(1976) Contract of city with state highway commission whereby city agreed to pay fifty percent of the right-of-way costs of highway through city, estimated in the contract to be $32,500, was not ultra vires in that it did not specify exact amount of the consideration as required by this section since standard was provided whereby the consideration to be paid by city would be definitely determined. State ex rel. Highway Commission v. City of Washington (Mo.), 533 S.W.2d 555.
(1976) Held, contract not containing required language is void and city cannot be held liable on theory of ratification, estoppel, implied contract or quantum meruit. Missouri International Investigators, Inc. v. City of Pacific (A.), 545 S.W.2d 684.
(1977) Held, requirement that teacher's contract be in writing is mandatory and must be pleaded and proved. Neal v. Junior College District of East Central Mo. (A.), 550 S.W.2d 580.

432.080. Duplicate copies to be made and preserved. - In every case of contract entered into by any county, city, town, village, school township, school district or other municipal corporation, or by any officer or agent on their behalf, duplicate copies of the same shall be executed as above provided, one of which shall be filed in the office of the clerk of the county commission of the proper county, or in such office or with such officer of the city, town, village, school township, school district or other municipal corporation as may be charged with the keeping of the contracts thereof, and shall not be taken thence except to be used for the purposes of

evidence in some legal matter or cause; and in case of variance between such copies, the one on file shall control in the construction of the contract.
(RSMo 1939 § 3350)
Prior revisions: 1929 § 2963; 1919 § 2165; 1909 § 2779

UNIFORM ELECTRONIC TRANSACTIONS ACT

432.200. Title. - Sections 432.200 to 432.295 shall be known and may be cited as the "Uniform Electronic Transactions Act".
(L. 2003 H.B. 254)

432.205. Definitions. - As used in sections 432.200 to 432.295, the following terms shall mean:

(1) **"Agreement"**, the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction;

(2) **"Automated transaction"**, a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction;

(3) **"Computer program"**, a set of statements or instructions to be used directly or indirectly in an information processing system to bring about a certain result;

(4) **"Contract"**, the total legal obligation resulting from the parties' agreement as affected by sections 432.200 to 432.295 and other applicable law;

(5) **"Electronic"**, relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(6) **"Electronic agent"**, a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual;

(7) **"Electronic record"**, a record created, generated, sent, communicated, received, or stored by electronic means;

(8) **"Electronic signature"**, an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(9) **"Governmental agency"**, an executive, legislative or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state;

(10) **"Information"**, data, text, images, sounds, codes, computer programs, software, databases, or the like;

(11) **"Information processing system"**, an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information;

(12) **"Person"**, an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity;

(13) **"Record"**, information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(14) **"Security procedure"**, a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption or callback, or other acknowledgment procedures;

(15) **"State"**, a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state;

(16) **"Transaction"**, an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.
(L. 2003 H.B. 254)

432.210. Scope. - 1. Except as otherwise provided in subsection 2 of this section, sections 432.200 to 432.295 apply to electronic records and electronic signatures relating to a transaction.

2. Sections 432.200 to 432.295 shall not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; and

(2) The uniform commercial code other than sections 400.1-107, 400.1-206, 400.2-101 to 400.2-725, and 400.2A-101 to 400.2A-532.

3. Sections 432.200 to 432.295 apply to an electronic record or electronic signature otherwise excluded from the application of sections 432.200 to 432.295 under subsection 2 of this section to the extent it is governed by a law other than those specified in subsection 2 of this section.

4. A transaction subject to sections 432.200 to 432.295 is also subject to other applicable substantive law.
(L. 2003 H.B. 254)

432.215. Prospective application. - Sections 432.200 to 432.295 apply to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after August 28, 2003.
(L. 2003 H.B. 254)

432.220. Use of electronic records and electronic signatures - variation by agreement. - 1. Sections 432.200 to 432.295 do not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

2. Sections 432.200 to 432.295 apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

3. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection shall not be waived by agreement.

4. Except as otherwise provided in sections 432.200 to 432.295, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of sections 432.200 to 432.295 of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions shall not be varied by agreement.

5. Whether an electronic record or electronic signature has legal consequences is determined by sections 432.200 to 432.295 and other applicable law.
(L. 2003 H.B. 254)

432.225. Construction and application. - Sections 432.200 to 432.295 shall be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of sections 432.200 to 432.295 among states enacting it.
(L. 2003 H.B. 254)

432.230. Legal recognition of electronic records, electronic signatures, and electronic contracts. - 1. A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

2. A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

3. If a law requires a record to be in writing, an electronic record satisfies the law.

4. If a law requires a signature, an electronic signature satisfies the law.
(L. 2003 H.B. 254)

432.235. Provision of information in writing - presentation of records. - 1. If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

2. If a law other than sections 432.200 to 432.295 requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law;

(2) Except as otherwise provided in subdivision (2) of subsection 4 of this section, the record shall be sent, communicated, or transmitted by the method specified in the other law;

(3) The record shall contain the information formatted in the manner specified in the other law.

3. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

4. The requirements of this section shall not be varied by agreement, but:

(1) To the extent a law other than sections 432.200 to 432.295 requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than sections 432.200 to 432.295 to send, communicate, or transmit a record by first class mail, postage prepaid, may be varied by agreement to the extent permitted by the other law.

(L. 2003 H.B. 254)

432.240. Attribution and effect of electronic record and electronic signature. - 1. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

(L. 2003 H.B. 254)

432.245. Effect of change or error. - If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) Has not used or received any benefit or value from the consideration, if any, received from the other person;

(3) If neither subdivision (1) nor subdivision (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(4) Subdivisions (2) and (3) of this section shall not be varied by agreement.

(L. 2003 H.B. 254)

432.250. Notarization and acknowledgment. - If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

(L. 2003 H.B. 254)

432.255. Retention of electronic records - originals. - 1. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated

in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

2. A requirement to retain a record in accordance with subsection 1 of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

3. A person may satisfy subsection 1 of this section by using the services of another person if the requirements of that subsection are satisfied.

4. If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented, or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection 1 of this section.

5. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection 1 of this section.

6. A record retained as an electronic record in accordance with subsection 1 of this section satisfies a law requiring a person to retain a record for evidentiary, audit or like purposes, unless a law enacted after August 28, 2003, specifically prohibits the use of an electronic record for the specified purpose.

7. This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.
(L. 2003 H.B. 254)

432.260. Admissibility of evidence. - In a proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.
(L. 2003 H.B. 254)

432.265. Automated transaction. - In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance;

(3) The terms of the contract are determined by the substantive law applicable to it.
(L. 2003 H.B. 254)

432.270. Time and place of sending and receipt. - 1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

3. Subsection 2 of this section applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4 of this section.

4. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction;

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

5. An electronic record is received under subsection 2 of this section even if no individual is aware of its receipt.

6. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

7. If a person is aware that an electronic record purportedly sent under subsection 1 of this section or purportedly received under subsection 2 of this section was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection shall not be varied by agreement.
(L. 2003 H.B. 254)

432.275. Transferable records. - 1. As used in this section, "transferable record" means an electronic record that:

(1) Would be a note under sections 400.3-101 to 400.3-605 or a document under sections 400.7-101 to 400.7-604* if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

3. A system satisfies subsection 2 of this section and a person is deemed to have control of a transferable record if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(a) The person to which the transferable record was issued; or

(b) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in subdivision (21)** of section 400.1-201, of the uniform commercial code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the uniform commercial code, including, if the applicable statutory requirements under section 400.3-302(a), 400.7-501, or 400.9-308 of the uniform commercial code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the uniform commercial code.

6. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.
(L. 2003 H.B. 254)

*Section 400.7-604 was repealed by H.B. 34, 2017.

**In 2017 statutory reference to subdivision "(20)" changed to "(21)" in accordance with section 3.060.

432.295. Severability clause. - If any provision of sections 432.200 to 432.295 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 432.200 to 432.295 which can be given effect without the invalid provision or application, and to this end the provisions of sections 432.200 to 432.295 are severable.
(L. 2003 H.B. 254)

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CHAPTER 443

MORTGAGES, DEEDS OF TRUST AND MORTGAGE BROKERS

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GENERAL PROVISIONS

443.130. Liability for failing to satisfy - demand by certified mail required. - 1. If the secured party, receiving satisfaction for the debt secured pursuant to this chapter, does not, within forty-five days after request and tender of costs, submit for recording a sufficient deed of release, such secured party shall be liable to the mortgagor for the lesser of an amount of three hundred dollars a day for each day, after the forty-fifth day, that the secured party fails to submit for recording a sufficient deed of release or ten percent of the amount of the security instrument, plus court costs and attorney fees to be recovered in any court of competent jurisdiction. In the event a document submitted for recording by a secured party is rejected for recording for any reason, such secured party shall have sixty days following receipt of notice that the document has been rejected in which to submit a recordable and sufficient deed of release.

2. To qualify under this section, the mortgagor or his or her agent shall provide the request in the form of a demand letter to the secured party by certified mail, return receipt requested or in another form that provides evidence of the date of receipt to the mortgagor. The letter shall include good and sufficient evidence that the debt secured by the deed of trust was satisfied with good funds, and the expense of filing and recording the release was advanced.

3. In any action against such person who fails to release the lien as provided in subsections 1 and 2 of this section, the plaintiff, or his or her attorney, shall prove at trial that the plaintiff notified the holder of the note by certified mail, return receipt requested, or as otherwise permitted by subsection 2 of this section.

(RSMo 1939 § 3472, A.L. 1994 H.B. 1312, A.L. 1996 H.B. 1432, A.L. 2004 H.B. 959)
Prior revisions: 1929 § 3085; 1919 § 2244; 1909 § 2850

(1996) Cost means the recorder of deeds' fee for releasing the deed of trust. Murray v. Fleet Mortgage Corp., 936 S.W.2d 212 (Mo.App. E.D.).
(1996) This section requires a deed of release be delivered to the party making the satisfaction. Masterson v. Roosevelt Bank, 919 S.W.2d 9 (Mo.App. E.D.).

443.453. Financial institutions to pay property tax, how. - Financial institutions, as defined in section 381.410, RSMo, which are mortgage servicers, shall pay property tax obligations which they service from escrow accounts, as defined in Title 24, Part 3500, Section 17, Code of Federal Regulations, in one annual payment before the first day of January of the year following the year for which the tax is levied. Escrow accounts established between such financial institutions and borrowers are contractually binding and may disallow the payment of property taxes more than once a year as such payments are authorized in section 139.053, RSMo.

(L. 1999 S.B. 386 § 408.620)

443.454. Enforcement and servicing of real estate loans, federal and state law preemption. - The enforcement and servicing of real estate loans secured by mortgage or deed of trust or other security instrument shall be pursuant only to state and federal law and no local law or ordinance may add to, change, delay enforcement, or interfere with any loan agreement, security instrument,

mortgage or deed of trust. No local law or ordinance may add, change, or delay any rights or obligations or impose fees or taxes of any kind or require payment of fees to any government contractor related to any real estate loan agreement, mortgage or deed of trust, other security instrument, or affect the enforcement and servicing thereof.
(L. 2013 H.B. 446 & 211)

MORTGAGE BROKERS LICENSING

443.701. Citation of law. - Sections 443.701 to 443.893 shall be known and may be cited as the "Missouri Secure and Fair Enforcement for Mortgage Licensing Act".
(L. 2009 H.B. 382, A.L. 2010 H.B. 2201)

443.703. Definitions. - 1. For the purposes of sections 443.701 to 443.893, the following terms mean:

(1) **"Advertisement"**, the attempt by publication, dissemination, or circulation to induce, directly or indirectly, any person to apply for a loan to be secured by residential real estate;

(2) **"Affiliate"**:

(a) Any person who directly controls or is controlled by a residential mortgage loan broker and any other company that is directly affecting activities regulated by sections 443.701 to 443.893 that is controlled by the company that controls the residential mortgage loan broker;

(b) Any person:

a. Who is controlled, directly or indirectly, by a trust or otherwise by or for the benefit of shareholders who beneficially, or otherwise, controls, directly or indirectly, by trust or otherwise, the residential mortgage loan broker or any company that controls the residential mortgage loan broker; or

b. A majority of the directors or trustees of which constitute a majority of the persons holding any such office with the residential mortgage loan broker or any company that controls the residential mortgage loan broker; or

(c) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the residential mortgage loan broker or any subsidiary or affiliate of the residential mortgage loan broker;

(3) **"Board"**, the residential mortgage board created in section 443.816;

(4) **"Borrower"**, the person or persons who use the services of a licensee to obtain a residential mortgage loan;

(5) **"Depository institution"**, the same meaning as such term is defined in Section 3 of the Federal Deposit Insurance Act, and includes any credit union;

(6) **"Director"**, the director of the division of finance;

(7) **"Division"**, the division of finance within the department of commerce and insurance;

(8) **"Dwelling"**, the same meaning as such term is defined in the federal Truth In Lending Act;

(9) **"Escrow agent"**, a third party or person charged with the fiduciary obligation for holding escrow funds on a residential mortgage loan pending final payout of such funds in accordance with the terms of the residential mortgage loan;

(10) **"Exempt person"**, the following persons:

(a) Any person that is a depository institution or first-tier subsidiary or service corporation thereof;

(b) Any person engaged solely in commercial mortgage lending or any person making or acquiring commercial construction loans with the person's own funds for the person's own investment;

(c) Any person engaged solely in the business of securing existing loans on the secondary market provided such person does not make decisions about the extension of credit to the borrower;

(d) Any wholesale mortgage lender who purchases existing mortgage loans provided such wholesale lender does not make decisions about the extension of credit to the borrower;

(11) **"Federal banking agencies"**, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(12) **"Full-service office"**, office and staff in Missouri reasonably adequate to handle efficiently communications, questions, and other matters relating to any application for a new or existing home mortgage loan which the residential mortgage loan broker is brokering, funding, originating, purchasing, or servicing. The management and operation of each full-service office shall include observance of good business practices such as adequate, organized, and accurate books and records, ample phone lines, hours of business, staff

training and supervision, and provision for a mechanism to resolve consumer inquiries, complaints, and problems. The director shall promulgate rules with regard to the requirements of this subdivision and shall include an evaluation of compliance with this subdivision in the periodic examination of the residential mortgage loan broker;

(13) **"Immediate family member"**, a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships;

(14) **"Individual"**, a natural person;

(15) **"Individual mortgage loan servicer"**, a person who on behalf of a lender or servicer licensed by this state collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process;

(16) **"Lender"**, any person who either lends money for or invests money in residential mortgage loans;

(17) **"Licensee"**, any person licensed under sections 443.701 to 443.893;

(18) **"Loan brokering"**, **"mortgage brokering"**, or **"mortgage brokerage service"**, the act of helping to obtain for an investor or from an investor for a borrower a residential mortgage loan secured by real estate situated in Missouri or assisting an investor or a borrower in obtaining a residential mortgage loan secured by real estate situated in Missouri in return for consideration;

(19) **"Loan processor or underwriter"**, an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under sections 443.701 to 443.893;

(a) For purposes of this definition, clerical or support duties may include activities subsequent to the receipt of a residential mortgage loan application, including:

a. The receipt, collection, distribution, and analysis or information common for the processing or underwriting of a residential mortgage loan; and

b. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;

(b) For an individual to be considered engaged solely in loan processor or underwriter activities, such individual shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(20) **"Mortgage loan originator"**, an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application, or offers or negotiates terms of a residential mortgage loan. Mortgage loan originator does not include:

(a) An individual engaged solely as a loan processor or underwriter except as otherwise provided in sections 443.701 to 443.893;

(b) A person that only performs real estate brokerage activities and is licensed or registered in accordance with Missouri law, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(c) A person solely involved in extensions of credit relating to time-share plans, as the term time-share plans is defined in section 101(53D) of Title 11, United States Code;

(d) An individual who is servicing a mortgage loan; and

(e) A person employed by a licensed mortgage broker or loan originator who accepts or receives residential mortgage loan applications;

(21) **"Nationwide Mortgage Licensing System and Registry"** or **"NMLSR"**, a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators or licensed residential mortgage brokers;

(22) **"Nontraditional mortgage product"**, any mortgage product other than a thirty-year fixed rate mortgage;

(23) **"Party to a residential mortgage financing transaction"**, a borrower,

lender, or loan broker in a residential mortgage financing transaction;

(24) **"Payments"**, payment of all or any part of the following: principal, interest and escrow reserves for taxes, insurance, and other related reserves and reimbursement for lender advances;

(25) **"Person"**, a natural person, corporation, company, limited liability company, partnership, or association;

(26) **"Purchasing"**, the purchase of conventional or government-insured mortgage loans secured by residential real estate from either the lender or from the secondary market;

(27) **"Real estate brokerage activity"**, any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating on behalf of any buyer, seller or lessor any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, but not activity to obtain a residential mortgage loan for a borrower other than bona fide seller financing;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any authorized activity or act in any authorized capacity described in paragraph (a), (b), (c), or (d) of this subdivision;

(28) **"Residential mortgage board"**, the residential mortgage board created in section 443.816;

(29) **"Residential mortgage financing transaction"**, the negotiation, acquisition, sale, or arrangement for or the offer to negotiate, acquire, sell, or arrange for a residential mortgage loan or residential mortgage loan commitment;

(30) **"Residential mortgage loan"**, any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling;

(31) **"Residential mortgage loan broker"**, any person, other than an exempt person, engaged in the business of brokering, funding, servicing, or purchasing residential mortgage loans;

(32) **"Residential mortgage loan brokerage agreement"**, a written agreement in which a residential mortgage broker agrees to do either of the following:

(a) Obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan; or

(b) Consider making a residential mortgage loan to the borrower;

(33) **"Residential mortgage loan commitment"**, a written conditional agreement to finance a residential mortgage loan;

(34) **"Registered mortgage loan originator"**, any individual who:

(a) Meets the definition of mortgage loan originator and is an employee of:

a. A depository institution;

b. A subsidiary or service corporation that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

c. An institution regulated by the Farm Credit Administration; and

(b) Is registered with and maintains a unique identifier through, the NMLSR;

(35) **"Residential real estate"**, any real property located in Missouri upon which is constructed or intended to be constructed a dwelling;

(36) **"Servicing"**, the collection or remittance for, or the right or obligation to collect or remit for, any lender, noteowner, noteholder or for a residential mortgage loan broker's own account of payments, interests, principal and trust items such as hazard insurance and taxes on a residential mortgage loan and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

(37) **"Soliciting, processing, placing, or negotiating a residential mortgage loan"**, for compensation or gain, either directly or indirectly accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the processing of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower, including but not limited to the submission of credit packages for the approval of lenders, the preparation of

residential mortgage loan closing documents, and including a closing in the name of a broker;

(38) **"Ultimate equitable owner"**, a person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, alien business organization, trust, or any other form of business organization regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies, or other entities or devices, or any combination thereof;

(39) **"Unique identifier"**, a number or other identifier assigned by protocols established by the NMLSR.

2. The director may define by rule any terms used in sections 443.701 to 443.893 for efficient and clear administration.
(L. 2009 H.B. 382, 2010 H.B. 2201)

443.706. Licensure required, when - effective date - exemptions. - 1. No individual, unless exempted under subsection 3 of this section, shall engage in the business of a mortgage loan originator concerning any dwelling located in Missouri without first obtaining and maintaining a license under sections 443.701 to 443.893 and obtaining employment and acting under the supervision of a single Missouri licensed residential mortgage broker. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the NMLSR.

2. In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection 1 of this section shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development under the authority granted under Public Law 110-289, Section 1508(a).

3. The following are exempt from sections 443.701 to 443.893:

(1) Registered mortgage loan originators when employed and acting under subdivision (34) of subsection 1 of section 443.703;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.
(L. 2009 H.B. 382)

443.707. Loan processors and underwriters, license required. - A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter for a Missouri residential real estate loan unless such independent contractor loan processor or underwriter obtains and maintains a license under section 443.706. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the NMLSR. Each independent contractor loan processor or underwriter shall certify annually under oath to the director that they shall not engage in the activities of a mortgage loan originator absent full compliance with section 443.706.
(L. 2009 H.B. 382)

443.709. Rulemaking authority - expedited review and licensing procedures permitted, when. - To implement an orderly and efficient licensing process for mortgage loan originators, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. The director may establish expedited review and licensing procedures for individuals previously licensed as a residential mortgage loan broker in Missouri or for individuals who were previously an ultimate equitable owner of a residential mortgage loan broker in Missouri.
(L. 2009 H.B. 382)

443.711. Application for licensure, form - records and fees - modification of licensure requirements permitted, when - use of NMLSR as an agent, when. - 1. Applicants for a mortgage loan originator license shall apply in a form as prescribed by

the director. Each such form shall contain content as set forth by rule, instruction, or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of sections 443.701 to 443.893.

2. In order to fulfill the purposes of sections 443.701 to 443.893, the director is authorized to establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to sections 443.701 to 443.893.

3. For the purpose of participating in the NMLSR, the director is authorized to modify, in whole or in part, by rule or order, the requirements of sections 443.701 to 443.893 as necessary to participate in the NMLSR.

4. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the NMLSR information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or person authorized to receive such information for a state, national, and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the director to obtain:

(a) An independent credit report from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act. No applicant would be denied a license solely on the basis of a credit score; and

(b) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

5. For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subdivision (1) of subsection 4 of this section and paragraph (b) of subdivision (2) of subsection 4 of this section, the director may use the NMLSR as an agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

6. For the purposes of this section and in order to reduce the points of contact which the director may have to maintain for purposes of paragraphs (a) and (b) of subdivision (2) of subsection 4 of this section, the director may use the NMLSR as an agent for requesting and distributing information to and from any source so directed by the director. (L. 2009 H.B. 382)

443.713. Findings required for licensure. - The director shall not issue a mortgage loan originator license unless the director makes, at a minimum, the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction; except that, a subsequent formal vacation of such revocation shall not be deemed a revocation;

(2) The applicant has not been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(a) During the seven-year period preceding the date of the application for licensing and registration; or

(b) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; and

(c) Provided that any pardon of a conviction shall not be a conviction for purposes of this subdivision;

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator shall operate honestly, fairly, and efficiently within the purposes of sections 443.701 to 443.893;

(a) For purposes of this subdivision, an individual has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

a. Current outstanding judgments, except judgments solely as a result of medical expenses;

b. Current outstanding tax liens or other government liens and filings;

c. Foreclosures within the past three years;

d. A pattern of seriously delinquent accounts within the past three years;

(4) The applicant has completed the prelicensing education requirement described in sections 443.701 to 443.893;

(5) The applicant has passed a written test that meets the requirements described in sections 443.701 to 443.893;

(6) The applicant or the applicant's employer has met the Missouri surety bond requirement under sections 443.701 to 443.893.
(L. 2009 H.B. 382)

443.717. Prelicensing education requirements. - 1. Mortgage loan originators shall satisfy a prelicensing education requirement through approved education courses of at least twenty hours approved in accordance with subsection 2 of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. For purposes of subsection 1 of this section, prelicensing approved education courses include courses reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

3. Nothing in this section shall preclude any prelicensing education course, as approved by the NMLSR, that is provided by the employer of the applicant or person who is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or person.

4. Prelicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

5. The prelicensing education requirements approved by the NMLSR in subdivisions (1) to (3) of subsection 1 of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in Missouri.

6. A person previously licensed under sections 443.701 to 443.893 applying to be licensed again shall prove that they have completed all of the continuing education requirements, if any, for the year in which the license was last held.

7. A prelicensing education course completed by an individual shall not satisfy the prelicensing education requirement if the course precedes an application by a certain period as established by the NMLSR.
(L. 2009 H.B. 382, A.L. 2020 S.B. 599)

443.719. Written test required, test measures - minimum competency requirements. - 1. In order to meet the written test requirement under sections 443.701 to 443.893, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the NMLSR based upon reasonable standards, and designated as the NMLSR's** National Test Component with Uniform State Content for Mortgage Loan Originator licensing.

2. A written test shall not be treated as a qualified written test for purposes of subsection 1 of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination;

(4) Federal and state law and regulation on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

3. Nothing in this section shall prohibit a test provider approved by the NMLSR from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any person with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

4. An applicant for licensure as a mortgage loan originator shall demonstrate minimum competence as follows:

(1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions;

(2) An individual may retake a test two times with each consecutive taking occurring at least thirty days after the preceding test;

(3) After failing three consecutive tests, an individual shall wait at least six months before taking the test again;

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.
(L. 2009 H.B. 382, A.L. 2015 S.B. 345)
**Word "NMLSR'S" appears in original rolls.

443.721. Renewal of licensure, minimum standards. - 1. Minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under sections 443.701 to 443.893;

(2) The mortgage loan originator has satisfied the annual continuing education requirements under sections 443.701 to 443.893;

(3) The mortgage loan originator has paid all required fees for renewal of the license and any other outstanding obligations to the division or the NMLSR.

2. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

(L. 2009 H.B. 382)

443.723. Continuing education requirements. - 1. To meet the annual continuing education requirements referred to in sections 443.701 to 443.893, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection 2 of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) One hour of Missouri law and regulations.

2. For purposes of subsection 1 of this section, continuing education courses shall be reviewed, and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

3. Nothing in this section shall preclude any education course, as approved by the NMLSR, that is provided by the employer of the mortgage loan originator or person who is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or person.

4. Continuing education may be offered either in a classroom, online, or by any other means approved by the NMLSR.

5. A licensed mortgage loan originator:

(1) Shall only receive credit for a continuing education course in the year in which the course is taken except in the case of an expired license and under subsection 9 of this section; and

(2) Shall not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

7. A person having successfully completed the education requirements approved by the NMLSR in subdivisions (1) to (3) of subsection 1 of this section for any state shall be accepted as credit towards completion of continuing education requirements in Missouri.

8. A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

9. A person meeting the requirements of subdivisions (1) and (3) of subsection 2 of section 443.719 may make up any deficiency in continuing education as established by rule of the director.

(L. 2009 H.B. 382, A.L. 2013 S.B. 100)

443.725. Duties of director - rule requirements authorized. - In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the NMLSR. In order to carry out such requirement, the director is authorized to participate in the NMLSR. For this purpose, the director may establish by rule requirements as necessary, including but not limited to:

(1) Background checks for:

(a) Criminal history through fingerprint or other databases;

(b) Civil or administrative records;

(c) Credit history; or

(d) Any other information as deemed necessary by the NMLSR;

(2) The payment of fees to apply for or renew licenses through the NMLSR;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other such activities as the director deems necessary for participation in the NMLSR.

(L. 2009 H.B. 382)

443.727. Challenge of information in NMLSR. - The director shall establish a process whereby mortgage loan originators may challenge information entered into the NMLSR by the director.

(L. 2009 H.B. 382)

443.729. Supervision and enforcement - civil penalty. - 1. In order to ensure the effective supervision and enforcement of sections 443.701 to 443.893, the director may, under chapter 536, RSMo:

(1) Deny, suspend, revoke, condition, or decline to renew a license for a violation of sections 443.701 to 443.893, rules issued under sections 443.701 to 443.893, or order or directive entered under sections 443.701 to 443.893;

(2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of sections 443.701 to 443.893, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to sections 443.701 to 443.893 for violations of sections 443.701 to 443.893;

(4) Impose fines on persons subject to sections 443.701 to 443.893 under subsections 2, 3, and 4 of this section;

(5) Issue orders or directives under sections 443.701 to 443.893 as follows:

(a) Order or direct persons subject to sections 443.701 to 443.893 to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(b) Order or direct persons subject to sections 443.701 to 443.893 to cease any harmful activities or violations of sections 443.701 to 443.893, including immediate temporary orders to cease and desist;

(c) Enter immediate temporary orders to cease business under a license or interim license issued under the authority granted under section 443.706 if the director determines that such license was erroneously granted or the licensee is currently in violation of any of the provisions of sections 443.701 to 443.893;

(d) Order or direct such other affirmative action as the director deems necessary.

2. Any letter issued by the director and declaring grounds for denying or declining to renew a license may be appealed to the board under chapter 536, RSMo. All other matters presenting a contested case involving a licensee may be heard by the director under chapter 536, RSMo.

3. The director may impose a civil penalty on a mortgage loan originator or person subject to sections 443.701 to 443.893, if the director finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to sections 443.701 to 443.893 has violated or failed to comply with any requirement of sections 443.701 to 443.893 or any regulation prescribed by the director under sections 443.701 to 443.893 or order issued under authority of sections 443.701 to 443.893.

4. The maximum amount of penalty for each act or omission described in subsection 3 of this section shall be twenty-five thousand dollars.

5. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(L. 2009 H.B. 382)

443.731. Surety bond requirements. - 1. (1) Each mortgage loan originator shall be covered by the surety bond for the Missouri licensed mortgage broker supervising the mortgage loan originator and for whom the mortgage loan originator acts as an employee or exclusive agent.

(2) The surety bond shall be in a form as prescribed by the director and shall provide coverage in an amount as prescribed in subsection 2 of this section.

(3) The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of sections 443.701 to 443.893.

2. The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the director but shall in no case be less than fifty thousand dollars or more than one million dollars.

3. When an action is commenced on a licensee's bond, the director may require the filing of a new bond.

4. Immediately upon recovery on the bond, the licensee shall file a new bond.
(L. 2009 H.B. 382)

443.733. Supervisory information sharing - confidentiality requirements. - In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law and sections 361.070 and 361.080, RSMo, regarding the privacy or confidentiality of any information or material provided to the director and to the NMLSR by a licensee or by the director, and any privilege arising under federal or state law, including the rules of any federal or state court with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the NMLSR. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or by sections 361.070 and 361.080, RSMo;

(2) The director is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director;

(3) Information or material that is subject to a privilege or confidentiality under subdivision (1) of this section shall not be subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(4) Confidential supervisory information obtained under sections 443.701 to 443.893 shall be regarded as closed records under chapter 610, RSMo;

(5) This section shall not apply to the information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage loan originators or residential mortgage loan brokers that is included in the NMLSR for access by the public.
(L. 2009 H.B. 382)

443.735. Investigations and examinations, authority of director. - In addition to any authority allowed under sections 443.701 to 443.893, the director shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with sections 443.701 to 443.893, the director shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including but not limited to:

(a) Criminal, civil, and administrative history information, including nonconviction data; and

(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act. No applicant would be denied a license solely on the basis of a credit score; and

(c) Any other documents, information, or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) For the purposes of investigating violations or complaints arising under sections 443.701 to 443.893, or for the purposes of examination, the director may review, investigate, or examine any licensee, individual, or person subject to sections 443.701 to 443.893 as often as necessary to carry out the purposes of sections 443.701 to 443.893. The director may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents as the director deems relevant to the inquiry;

(3) Each licensee, individual, or person subject to sections 443.701 to 443.893 shall make available to the director, upon request, the books and records relating to the operations of such licensee, individual, or person subject to sections 443.701 to 443.893. The director shall have access to such books and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to sections 443.701 to 443.893 concerning their business;

(4) Each licensee, individual, or person subject to sections 443.701 to 443.893 shall make or compile reports or prepare other information as directed by the director to carry out the purposes of this section, including but not limited to:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the director; or

(c) Such other information deemed necessary to carry out the purposes of this section;

(5) In making any examination or investigation authorized by sections 443.701 to 443.893, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation by the licensee or owner of the documents and records, the licensee or owner shall have access to the documents or records as necessary to conduct its ordinary business affairs;

(6) To carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to sections 443.701 to 443.893;

(d) Accept and rely on examination or investigation reports made by other government officials within or without this state; or

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to sections 443.701 to 443.893 in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director;

(7) The authority of this section shall remain in effect whether such a licensee, individual, or person subject to sections 443.701 to 443.893 acts or claims to act under any licensing or registration law of this state or claims to act without such authority;

(8) No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.
(L. 2009 H.B. 382)

443.737. Violations. - It is a violation of sections 443.701 to 443.893 for a person or individual subject to sections 443.701 to 443.893 to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to sections 443.701 to 443.893 may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by sections 443.701 to 443.893 without holding a valid license and employment as required under sections 443.701 to 443.893, or assist or aide and abet any person in the conduct of business under sections 443.701 to 443.893 without a valid license as required under sections 443.701 to 443.893;

(7) Fail to make disclosures as required by sections 443.701 to 443.893 and any other applicable state or federal law;

(8) Fail to comply with sections 443.701 to 443.893 or rules promulgated under sections 443.701 to 443.893, or fail to comply with any other state or federal law, including the rules applicable to any business authorized or conducted under sections 443.701 to 443.893;

(9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by sections 443.701 to 443.893;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

(L. 2009 H.B. 382)

443.739. Reports of condition required. - Each residential mortgage loan broker subject to the requirements of sections 443.701 to 443.893 shall submit to the NMLSR reports of condition, which shall be in such form and shall contain such information as the NMLSR may require.

(L. 2009 H.B. 382)

443.741. Violations, director required to report. - The director is required to report violations of sections 443.701 to 443.893, as well as enforcement actions and other relevant information, to the NMLSR subject to the provisions contained in section 443.731.

(L. 2009 H.B. 382)

443.743. Nonfederally insured credit unions, registration of employed loan originators required. - Nonfederally insured credit unions which employ loan originators, as defined in Public Law 110-289, Title V, the S.A.F.E. Act, shall register such employees with the NMLSR by furnishing the information concerning the employees' identity set forth in Section 1507(a)(2) of Public Law 110-289, Title V.

(L. 2009 H.B. 382)

443.745. Unique identifier to be shown on applications, solicitations, or advertisements. - The unique identifier of any person originating a residential mortgage loan and in the case of a mortgage loan originator, the residential mortgage loan broker license number or corresponding unique identifier of the mortgage loan broker shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule or order of the director.

(L. 2009 H.B. 382)

443.747. Severability clause - rulemaking authority. - If any provision of sections 443.701 to 443.893 or their application to any person or circumstance is held invalid, the remainder of sections 443.701 to 443.893 or the application of the provision to other persons or circumstances is not affected. If the United States Department of Housing and Urban Development disapproves* in writing to the director of any provision of sections 443.701 to 443.893 under authority granted to it under Section 1508 of Public Law 110-289, Title V, the

S.A.F.E. Act, the director may, in accordance with the director's rulemaking authority under sections 443.701 to 443.893 and chapter 536, RSMo, adopt rules as necessary to participate or continue participation in the NMLSR.
(L. 2009 H.B. 382)
*Word "disapprove" appears in original rolls.

443.805. License required to broker residential mortgage. - 1. No person shall engage in the business of brokering, funding, servicing or purchasing of residential mortgage loans without first obtaining a license as a residential mortgage loan broker from the director, pursuant to sections 443.701 to 443.893 and the regulations promulgated thereunder . The licensing provisions of sections 443.805 to 443.812 shall not apply to any person engaged solely in commercial mortgage lending or to any person exempt as provided in section 443.703 or pursuant to regulations promulgated as provided in sections 443.701 to 443.893.

2. No person except a licensee or exempt person shall do any business under any name or title or circulate or use any advertising or make any representation or give any information to any person which indicates or reasonably implies activity within the scope of the provisions of sections 443.701 to 443.893.
(L. 1994 S.B. 718 § 2 subsecs. 1, 2, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382, A.L. 2010 H.B. 2201, A.L. 2014 H.B. 1298 Revision)

443.807. Director, power to request injunction, when. - The director may, through the attorney general, request the circuit court in the appropriate jurisdiction to issue an injunction to restrain any person from violating, or continuing to violate, any provision of sections 443.701 to 443.893.
(L. 1994 S.B. 718 § 2 subsec. 3, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.809. Examination, powers of director to inspect records of licensed persons. - The director shall have the authority, at any time and as often as reasonably necessary, to investigate or examine the books and records of any licensed person to assure compliance with sections 443.701 to 443.893. The director shall have the right to examine under oath all persons whose testimony may be required relative to the business of any person being examined or investigated under sections 443.701 to 443.893. The director shall have free and immediate access to any licensed person's places of business and to all books and records related to the licensed business.
(L. 1994 S.B. 718 § 2 subsec. 4, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2008 H.B. 2188, A.L. 2009 H.B. 382)

443.810. Penalty for violations. - Any person who violates any provision of sections 443.805 to 443.812 is guilty of a class D felony. In addition, in any contested case proceeding, the director or board may assess a civil penalty of up to twenty-five thousand dollars per violation for any violation of any of the provisions of sections 443.701 to 443.893.
(L. 1994 S.B. 718 § 2 subsec. 5, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2008 H.B. 2188, A.L. 2009 H.B. 382, A.L. 2014 S.B. 491)

443.812. One license issued to each broker - record required of locations where any business is conducted - supervision requirements - waiver of licensure, when - manufactured or modular home loans. - 1. Only one license shall be issued to each person conducting the activities of a residential mortgage loan broker. A residential mortgage loan broker shall register with the director each office, place of business or location in Missouri where the residential mortgage loan broker conducts any part of the residential mortgage loan broker's business pursuant to section 443.839.

2. Residential mortgage loan brokers may only solicit, broker, fund, originate, serve and purchase residential mortgage loans in conformance with sections 443.701 to 443.893 and such rules as may be promulgated by the director.

3. No residential mortgage loan broker shall permit an unlicensed individual to engage in the activities of a mortgage loan originator and no residential mortgage loan broker shall permit a mortgage loan originator to engage in the activities of a mortgage loan originator under the supervision of the residential mortgage loan broker until that mortgage loan originator is shown to be employed by the residential mortgage loan broker as provided in this section.

4. Each residential mortgage loan broker shall report and file a listing with the director showing each mortgage loan originator licensed in Missouri and employed under the supervision of the residential mortgage loan

broker. The listing shall show the name and unique identifier of each mortgage loan originator. The listing shall be updated with changes and filed no later than the next business day. The director may authorize a system of reporting that shows mortgage loan originators employed by Missouri residential mortgage loan brokers via the NMLSR in substitution for the report and filing requirement under this subsection.

5. The director may grant waivers of residential mortgage loan broker licensing requirements for persons engaged primarily in servicing residential mortgage loans where such waiver shall benefit borrowers including in particular the requirement to maintain a full-service office in Missouri.

6. (1) The provisions of this subsection shall apply only to residential mortgage loan brokers exclusively making loans on manufactured or modular homes.

(2) A residential mortgage loan broker licensed in this state shall not be required to maintain a full-service office in Missouri; however, nothing in this subsection shall be construed as relieving a broker of the requirement to be licensed in this state and to obtain a certificate of authority to transact business in this state from the secretary of state.

(3) A residential mortgage loan broker licensed in this state who does not maintain a full-service office in Missouri shall file with the license application an irrevocable consent in a form to be determined by the director, duly acknowledged, which provides that, for suits and actions commenced against the broker in the courts of this state and, if necessary, for actions brought against the broker, the venue shall lie in the circuit court of Cole County.

(4) The director may assess the reasonable costs of any investigation incurred by the division that are outside the normal expense of any annual or special examination or any other costs incurred by the division as a result of a licensed residential mortgage loan broker who does not maintain a full-service office in Missouri. All costs assessed under this subsection shall be paid to the director of the department of commerce and insurance and shall be deposited into the credit of the division of finance.

(L. 1994 S.B. 718 § 2 subsecs. 6, 7, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382, A.L. 2017 H.B. 292)

443.816. Residential mortgage board created - members, appointment, qualification, terms, vacancies, compensation, duties. - There is hereby created in the division of finance a "Residential Mortgage Board" which shall have such powers and duties as are now or hereafter conferred upon it by law. The board shall consist of five members who shall be appointed by the governor. The members of the board shall be residents of this state, and one of the members shall be a member of the Missouri Bar in good standing. Three members of the board shall be experienced in mortgage brokering and the remaining members of the board shall have no financial interest in any mortgage brokering business. Not more than three members of the board shall be members of the same political party. The term of office of each member shall be three years. Members shall serve until their successors are duly appointed and have qualified. Each member shall serve for the remainder of the term for which the member was appointed. The board shall select one of the members as chairman and one of the members as secretary. Vacancies on the board shall be filled for the unexpired term in the same manner as in the case of an original appointment. The members of the board shall receive as compensation the sum of one hundred dollars per day while discharging their duties, and they shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. A majority of the members of the board shall constitute a quorum and the decision of a majority of a quorum shall be the decision of the board. The board shall meet upon call of the chairman, or of the director, or of any two members of the board, and may meet at any place in this state. The board shall:

(1) Approve or disapprove each regulation proposed by the director pertaining to mortgage brokering; and

(2) Hear and determine any appeal from a denial of an application for or renewal of a license issued under sections 443.701 to 443.893. The board may employ, contract, or appoint hearing officers to hear appeals from applicants who have been denied a license or a license renewal by the director.

(L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.817. Board members to file business transactions with ethics commission - rules authorized to avoid conflict of interest. - Each member of the

residential mortgage board shall file annually, no later than February first, with the Missouri ethics commission a statement of the member's current business transactions or other affiliations with any residential mortgage loan broker under the provisions of sections 443.701 to 443.893 or such report as the Missouri ethics commission otherwise directs. The board may adopt any rules or regulations regarding the conduct of board members to avoid conflicts of interest on the part of the members of the residential mortgage board in connection with their positions on the board.
(L. 1994 S.B. 718 § 4 subsec. 2, A.L. 2009 H.B. 382)

443.819. Brokerage business to be operated under actual names of persons or corporations, violation, penalties. - 1. No person engaged in a business regulated by sections 443.701 to 443.893 shall operate or engage in such business under a name other than the real names of the persons conducting such business, a corporate name adopted pursuant to law, or a fictitious name registered with the secretary of state's office.

2. Any person who knowingly violates this section is guilty of a class A misdemeanor. A person who is convicted of a second or subsequent violation of this section is guilty of a class D felony.
(L. 1994 S.B. 718 § 5, A.L. 2001 S.B. 538, A.L. 2009 H.B. 382, A.L. 2014 S.B. 491)

443.821. License to be issued on completion of requirements - notice of denial of license to contain reasons - appeal procedure. - The director shall issue a residential mortgage loan broker license upon completion of the following:

(1) The filing of an application;

(2) The filing with the director of a listing of judgments entered against, and bankruptcy petitions by, the applicant for the preceding seven years;

(3) The payment of investigation and application fees to be established by administrative rule; and

(4) An investigation of the averments required by section 443.827, which investigation must allow the director to issue positive findings stating that the financial responsibility, experience, character and general fitness of the applicant, and of the members thereof, if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the scope of sections 443.701 to 443.893. If the director does not find the applicant's business and personal conduct warrants the issuance of a license, the director shall notify the applicant of the denial with the reasons stated for such denial. An applicant may appeal such denial to the board.
(L. 1994 S.B. 718 § 6 subsec. 1, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.823. Licenses to be issued in duplicate, effective when. - All residential mortgage loan broker licenses shall be issued in duplicate with one copy being transmitted to the license applicant and the second retained by the director. Upon receipt of such license, a residential mortgage loan broker may engage in a business regulated by sections 443.701 to 443.893. Such license shall remain in full force and effect until it expires without renewal, is surrendered by the residential mortgage loan broker or is revoked or suspended as provided in sections 443.701 to 443.893.
(L. 1994 S.B. 718 § 6 subsec. 2, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.825. Application content, oath and form - fingerprinting, when. - 1. Application for a residential mortgage loan broker license shall be made as provided in sections 443.833 and 443.835. The application shall be in writing, made under oath, and on a form provided by the director.

2. The director may, by rule, revise and conform the residential mortgage loan broker license application and renewal process, and the licensing dates and periods under sections 443.701 to 443.893 to a system of licensing residential mortgage loan brokers administered in cooperation with the NMLSR.

3. The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a form of business organization, the application shall contain the names and complete business and residential addresses of each member, director and principal officer of such person. Such application shall also include a description of the activities of the applicant, in such detail and for such periods as the director may require, including all of the following:

(1) An affirmation of financial solvency noting such capitalization requirements as may be required by the director, and access to such credit as may be required by the director;

(2) An affirmation that the applicant or the applicant's members, directors or principals, as may be appropriate, are at least eighteen years of age;

(3) Information that would support findings under subdivision (4) of section 443.821 as to the character, fitness, financial and business responsibility, background, experience and criminal records of any:

(a) Person or ultimate equitable owner that owns or controls, directly or indirectly, ten percent or more of any class of stock of the applicant;

(b) Person or ultimate equitable owner that is not a depository institution that lends, provides or infuses, directly or indirectly, in any way, funds to or into an applicant, in an amount equal to, or more than, ten percent of the applicant's net worth;

(c) Person or ultimate equitable owner that controls, directly or indirectly, the election of twenty-five percent or more of the members of the board of directors of the applicant; and

(d) Person or ultimate equitable owner that the director finds influences management of the applicant.

4. All persons listed under subdivision (3) of subsection 3 of this section shall furnish fingerprints to the NMLSR for submission to the Federal Bureau of Investigation and any governmental agency or person authorized to receive such information for a state, national, and international criminal history background check.

5. For the purposes of this chapter and in order to reduce the points of contact that the Federal Bureau of Investigation may have to maintain, the director may use the NMLSR as an agent for requesting information from and distributing information to the Department of Justice or any other governmental agency.

(L. 1994 S.B. 718 § 7, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382, A.L. 2009 H.B. 382, A.L. 2020 S.B. 599)

443.827. Applicant for license must agree to maintain certain requirements as to methods of conducting business. - Each application for a residential mortgage loan broker license shall be accompanied by an averment that the applicant:

(1) Will maintain at least one full-service office within the state of Missouri as provided in section 443.857;

(2) Will maintain staff reasonably adequate to meet the requirements of section 443.857;

(3) Will keep for thirty-six months the same written records as required by the federal Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., and any other information required by rules of the director;

(4) Will timely file any report required pursuant to sections 443.701 to 443.893;

(5) Will not engage, whether as principal or agent, in the practice of rejecting residential mortgage applications or varying terms or application procedures without reasonable cause, on real estate within any specific geographic area from the terms or procedures generally provided by the residential mortgage loan broker within other geographic areas of the state;

(6) Will not engage in fraudulent home mortgage underwriting practices;

(7) Will not make payments for the purpose of improperly influencing the independent judgment of an appraiser;

(8) Has filed state and federal tax returns for the past three years or filed a statement with the director as to why no return was filed;

(9) Will not engage in any activities prohibited by section 443.863;

(10) Will not knowingly misrepresent, circumvent or conceal any material particulars regarding a transaction to which the applicant is a party;

(11) Will disburse funds in accordance with the applicant's agreements through a licensed and bonded disbursing agent or licensed real estate broker;

(12) Has not committed any crime against the laws of this state, or any other state or of the United States, involving moral turpitude, fraudulent or dishonest dealings and that no final judgment has been entered against the applicant in a civil action on grounds of fraud, misrepresentation or deceit which has not been previously reported to the director;

(13) Will account for and deliver to any person any property as agreed or required by law, or, upon demand of the person entitled to such accounting and delivery;

(14) Has not engaged in any conduct which would be cause for denial of a license;

(15) Has not become insolvent;

(16) Has not submitted an application which contains a material misstatement;

(17) Has not demonstrated negligence or incompetence in the performance of any activity required to hold a license under sections 443.701 to 443.893;

(18) Will advise the director in writing of any changes to the information submitted on the most recent application for license within forty-five days of such change. The written notice must be signed in the same form as the application for the license being amended;

(19) Will comply with the provisions of sections 443.701 to 443.893, or with any lawful order or rule made thereunder;

(20) Will submit to periodic examinations by the director as required by sections 443.701 to 443.893;

(21) Will advise the director in writing of any judgments entered against, and bankruptcy petitions by, the license applicant within five days of the occurrence of the judgment or petition; and

(22) Will implement appropriate systems of supervision, management, and control to assure that each employee engaged in the activities of a mortgage loan originator does so in compliance with sections 443.701 to 443.893, and will promptly report any detected violations or apparent violations to the director within thirty days of detection.

(L. 1994 S.B. 718 § 8, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.830. License refused - grounds. - The director shall refuse to license or renew a residential mortgage loan broker license if:

(1) The applicant is not in compliance with any provision of sections 443.701 to 443.893;

(2) There is substantial continuity between the applicant and any violator of any provision of sections 443.701 to 443.893; or

(3) The director cannot make the findings specified in section 443.821.

(L. 1994 S.B. 718 § 9, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.833. Renewal of license, date, procedure, fee - failure to renew, license becomes inactive, reactivation - expires, when. - 1. Residential mortgage loan broker licenses shall be renewed on the first anniversary of the date of issuance and every two years thereafter or as otherwise determined by the director to implement a system of licensing compatible with the NMLSR. Renewal application forms and fees shall be submitted to the director at least sixty days before the renewal date.

2. The director shall send notice at least ninety days before the residential mortgage loan broker's renewal date, but failure to send or receive such notice is no defense for failure to timely renew, except when an extension for good cause is granted by the director. If the director does not grant an extension and the residential mortgage loan broker fails to submit a completed renewal application form and the proper fees in a timely manner, the director may assess additional fees as follows:

(1) A fee of five hundred dollars shall be assessed the residential mortgage loan broker thirty days after the proper renewal date, and one thousand dollars each month thereafter, until the license is either renewed or expires pursuant to subsections 3 and 4 of this section;

(2) Such fee shall be assessed without prior notice to the residential mortgage loan broker, but shall be assessed only in cases where the director possesses documentation of the residential mortgage loan broker's continuing activity for which the unrenewed license was issued.

3. A license which is not renewed by the date required in this section shall automatically become inactive. No activity regulated by sections 443.701 to 443.893 shall be conducted by the residential mortgage loan broker when a license becomes inactive. An inactive license may be reactivated by filing a completed reactivation application with the director, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

4. A license which is not renewed within one year of becoming inactive shall expire.

(L. 1994 S.B. 718 § 10 subsecs. 1 to 4, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.835. Broker ceasing activity and not desiring to be licensed, procedure - director to cancel license. - A residential mortgage loan broker ceasing an activity or activities regulated by sections 443.701 to 443.893 and desiring to no longer be licensed shall so inform the director in writing and, at the same time, return the license and all other symbols or indicia of licensure to the director. The residential mortgage loan broker shall include a plan for the withdrawal from a business regulated by sections 443.701 to

443.893, including a timetable for the disposition of the business. Upon receipt of such written notice, the director shall issue a certified statement canceling the license.
(L. 1994 S.B. 718 § 10 subsec. 5, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.839. Application by broker to open additional full-service offices, fee - certificate to be issued and posted. - 1. A residential mortgage loan broker may apply for authority to open and maintain additional offices in Missouri by:

(1) Giving the director prior notice of the residential mortgage loan broker's intention in such form as prescribed by the director; and

(2) Paying a fee to be established by the director.

2. On receipt of the notice and fee, the director shall issue a certificate for the additional office. The certificate shall be conspicuously displayed in the respective office.
(L. 1994 S.B. 718 § 12, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.841. License to be displayed. - The appropriate residential mortgage loan broker license or certificate shall be conspicuously displayed in every Missouri office. The license or certificate shall not be transferable or assignable.
(L. 1994 S.B. 718 § 13, A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.843. Fees to be established by director - rules authorized for assessment and collection. - 1. The expenses of administering sections 443.701 to 443.893, including investigations and examinations, shall be borne by and assessed against persons regulated by sections 443.701 to 443.893. The director shall establish fees by regulation or rule in at least the following categories:

(1) Application fees;

(2) Investigation of license applicant fees;

(3) Examination fees;

(4) Contingent fees;

(5) Fees collected by the NMLSR or paid by a licensee to the NMLSR; and

(6) Such other categories as may be required to administer sections 443.701 to 443.893.

2. In addition to any fees collected pursuant to sections 443.701 to 443.893, the director shall establish schedules of fees. Any fees established pursuant to the authority of sections 443.701 to 443.893 shall produce revenue that does not substantially exceed the cost of administering sections 443.701 to 443.893.
(L. 1994 S.B. 718 § 14 subsecs. 1, 2, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.845. Residential mortgage licensing fund created - purpose - fees to be deposited in interest-bearing account to credit of fund - amount in fund subject to lapse into general revenue. - 1. There is hereby created in the state treasury the "Residential Mortgage Licensing Fund" which shall be used, upon appropriation by the general assembly, for all costs incurred by the director in administering the provisions of sections 443.701 to 443.893. The director shall transmit all fees received by the director pursuant to sections 443.701 to 443.893 to the director of revenue for deposit in an interest-bearing account in the state treasury to the credit of the residential mortgage licensing fund. Any interest earned on the money in this fund shall be credited to the residential mortgage licensing fund.

2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriations from the residential mortgage licensing fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the residential mortgage licensing fund for the preceding fiscal years.
(L. 1994 S.B. 718 § 14 subsecs. 3, 4, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.849. Bonding requirements. - 1. Residential mortgage loan brokers shall deliver a surety bond to the director prior to the issuance or renewal of a license:

(1) The surety bond shall provide coverage in an amount as prescribed in subsection 2 of this section;

(2) The surety bond shall be in a form as prescribed by the director;

(3) Such bond shall be issued by a bonding or insurance company authorized to do

business in Missouri and shall secure the faithful performance of the applicant, its employees or agents, including mortgage loan originators, in connection with the activities of originating, servicing, or acquiring mortgage loans;

(4) The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of sections 443.701 to 443.893.

2. The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated by the residential mortgage loan broker as determined by the director but in no case shall be less than fifty thousand dollars or more than one million dollars.

3. When an action is commenced on a licensee's bond, the director may require the filing of a new bond.

4. Immediately upon any recovery on the bond, the licensee shall file a new bond.

5. The surety bond is for the protection of borrowers and the director may make a claim on the bond on behalf of any borrower sustaining injury as the result of the actions of a licensee not in compliance with or in violation of any of the provisions of sections 443.701 to 443.893.

6. In lieu of presenting a claim directly, the director may release the bond to a borrower or the borrower's attorney to present a claim.

7. The surety may cancel or withdraw the bond under such terms as the director may prescribe but the bond shall cover any actions that occurred while the bond was in place for the applicable period of limitations under statute and so long as the bond is not exhausted by valid claims of borrowers.

(L. 1994 S.B. 718 § 16, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.855. Advertising of mortgage loans, rulemaking authority. - The director may prescribe rules governing the advertising of mortgage loans, including, without limitation, rules that advertising pursuant to sections 443.701 to 443.893 may not be false, misleading or deceptive. No person whose activities are regulated pursuant to the provisions of sections 443.701 to 443.893 may advertise in any manner so as to indicate or imply that the person's interest rates or charges for loans are in any way recommended, approved, set or established by the state or federal government or by the provisions of sections 443.701 to 443.893.

(L. 1994 S.B. 718 § 18, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382, A.L. 2020 S.B. 599)

443.857. Licensee shall maintain at least one full-service office with staff, duties to handle matters relating to mortgage - waiver, when. - Each residential mortgage loan broker shall maintain, in the state of Missouri, at least one full-service office with staff reasonably adequate to efficiently handle all matters relating to any proposed or existing home mortgage with respect to which such residential mortgage loan broker is performing services; except that, this provision may be waived by the director for persons providing mortgage loan servicing or exclusively engaged in the business of loan processing or underwriting as defined in this chapter.

(L. 1994 S.B. 718 § 19, A.L. 2001 S.B. 538, A.L. 2009 H.B. 382, A.L. 2020 S.B. 599)

443.861. Transfer or sale of residential mortgage, notice to be given to mortgagor, contents. - Whenever the servicing of a residential mortgage is transferred or sold by a residential mortgage loan broker, notice shall be given to the mortgagor simultaneously with such transfer and shall include, at the minimum, where and to whom to address the mortgagor's questions relating to the residential mortgage, the exact name, address and telephone number to whom at least the next three months' payments are to be submitted and the total amount required of the mortgagor by the servicer for each of the months referred to in the notice.

(L. 1994 S.B. 718 § 21, A.L. 2009 H.B. 382)

443.863. Unlawful discrimination for refusal to loan or vary terms of the loan. - It is unlawful discrimination to refuse loans or to vary the terms of loans or the application procedures for loans because of:

(1) The borrower's race, color, religion, national origin, age, gender or marital status; or

(2) The location of the proposed security.

(L. 1994 S.B. 718 § 22, A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.865. Escrow accounts, placement by brokers - authority for rules. -

The director may promulgate rules with respect to placement in escrow accounts by any residential mortgage loan broker of any money, funds, deposits, checks or drafts entrusted to the residential mortgage loan broker.
(L. 1994 S.B. 718 § 23, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.867. Disclosure statement required of brokers, content - fee - compensation. - 1. Each residential mortgage loan broker shall disclose, within a loan brokerage disclosure statement and fee agreement with each borrower:

(1) Whether the licensee makes loans; and

(2) Whether the funds may be provided by another person which may affect availability of funds.

2. The mortgage loan brokerage disclosure statement and fee agreement shall disclose the amount and sources of the residential mortgage loan broker's fees and all other compensation related to obtaining a residential mortgage loan on behalf of the borrower.

3. The loan origination fee or other compensation of a residential mortgage loan broker shall not be limited under state law so long as the mortgage loan brokerage disclosure statement and fee agreement is fully compliant with this section and federal law.

4. A mortgage loan originator shall be compensated exclusively by the residential mortgage loan broker employing the mortgage loan originator. A mortgage loan originator shall not obtain compensation directly from any lender or borrower or any other person providing real estate settlement services.

5. In the event the mortgage loan brokerage disclosure statement and fee agreement is not fully compliant with this section or in the event the mortgage loan broker obtains fees and compensation in excess of the amount disclosed, the mortgage loan broker shall forfeit double the amount of fees and compensation obtained to the borrower.
(L. 1994 S.B. 718 § 24, A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.869. Powers and duties of director - rulemaking authority. - 1. The functions, powers and duties of the director shall include the following:

(1) To issue or refuse to issue any license as provided in sections 443.701 to 443.893;

(2) To revoke or suspend for cause any license issued pursuant to sections 443.701 to 443.893;

(3) To keep records of all licenses issued pursuant to sections 443.701 to 443.893;

(4) To receive, consider, investigate and act upon complaints made by any person in connection with any residential mortgage loan broker or mortgage loan originator in this state;

(5) To consider and act upon any recommendations from the residential mortgage board;

(6) To prescribe the forms for and receive:

(a) Applications for licenses; and

(b) All reports and all books and records required to be made by any residential mortgage loan broker pursuant to the provisions of sections 443.701 to 443.893, including annual audited financial statements;

(7) To adopt rules necessary and proper for the administration of sections 443.701 to 443.893;

(8) To subpoena documents and witnesses and compel their attendance and production, to administer oaths and to require the production of any books, papers or other material relevant to any inquiry authorized by sections 443.701 to 443.893;

(9) To require information with regard to any applicant as the director may deem desirable, with due regard to the paramount interests of the public, about the experience, background, honesty, truthfulness, integrity and competency of the applicant concerning financial transactions involving primary or subordinate mortgage financing and where the applicant is a person other than an individual, as to the honesty, truthfulness, integrity and competency of any officer or director of the corporation, association or other person or the members of a partnership;

(10) To examine the books and records of every residential mortgage loan broker at intervals as provided by sections 443.701 to 443.893 and the rules promulgated thereunder;

(11) To enforce the provisions of sections 443.701 to 443.893;

(12) To levy fees and charges for services performed in administering the provisions of sections 443.701 to 443.893. The aggregate of all fees collected by the director shall be deposited promptly after receipt and accompanied by a detailed statement of such receipts in the residential mortgage licensing

fund; provided that fees may also be collected under the requirements of the NMLSR;

(13) To appoint a staff which may include an executive director, examiners, supervisors, experts, special assistants and any necessary support staff as needed to effectively and efficiently administer the provisions of sections 443.701 to 443.893;

(14) To conduct hearings for such purposes as the director deems appropriate; and

(15) To enter into agreements or contracts with authorized representatives of the NMLSR as appropriate to implement the NMLSR in Missouri.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

(L. 1994 S.B. 718 § 25, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.871. Director may issue subpoenas and subpoenas duces tecum - authority to administer oaths. - The director may issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records and other documents and materials relevant to an examination or investigation. The director or the director's duly authorized representative may administer oaths and affirmations to any person.

(L. 1994 S.B. 718 § 26 subsec. 1, A.L. 1995 H.B. 63, et al.)

443.873. Failure to comply with subpoenas, director may petition circuit court for compliance order, injunctive relief and other remedies authorized. - If any person does not comply with a subpoena or subpoena duces tecum issued or caused to be issued by the director, the director may petition the circuit court of the county in which the person subpoenaed resides or has the person's principal place of business for an order requiring the subpoenaed person to appear and testify and to produce such books, accounts, records and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from advertising, promoting, soliciting, entering into, offering to enter into, continuing, or completing any residential mortgage financing transaction or residential mortgage servicing transaction. The court may grant such other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment or other disposition of the person's assets or any concealment, alteration, destruction or other disposition of books, accounts, records or other documents and materials as the court deems appropriate, until the person has fully complied with the subpoena or subpoena duces tecum and the director has completed an investigation or examination.

(L. 1994 S.B. 718 § 26 subsec. 2, A.L. 1995 H.B. 63, et al.)

443.875. Bond may be required, conditioned on compliance with subpoena, when. - When it appears to the director that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the director pursuant to sections 443.871 to 443.877 is essential to an investigation or examination, the director, in addition to the other remedies provided for in sections 443.871 to 443.877, may apply for relief to the circuit court of the county in which the subpoenaed person resides or has the person's principal place of business. The court shall thereupon direct the issuance of an order against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be endorsed on the order a suitable amount of bond or payment pursuant to which the person named in the order shall be freed, having a due regard to the nature of the case.

(L. 1994 S.B. 718 § 26 subsec. 3, A.L. 1995 H.B. 63, et al.)

443.877. Writ of attachment authorized on failure to comply with subpoena. - In addition to the other provisions of sections 443.871 to 443.877, the director may seek a writ of attachment or an equivalent order from the circuit court having jurisdiction over the person who has refused to obey a subpoena, who has refused to give testimony or who has refused to produce the material described in the subpoena duces tecum.

(L. 1994 S.B. 718 § 26 subsec. 4, A.L. 1995 H.B. 63, et al.)

443.879. Reports required, failure to comply, penalty. - 1. In addition to any reports required pursuant to sections 443.701 to 443.893, every licensee shall file such other reports as the director shall request.

2. Any residential mortgage loan broker or any officer, director, employee or agent of any residential mortgage loan broker who fails to file any reports required by sections 443.701 to 443.893 or who shall deliberately, willfully or knowingly make, subscribe to or cause to be made any false entry with intent to deceive the director or the director's appointees or who shall purposely cause delay in filing such reports shall be deemed guilty of a class A misdemeanor.

(L. 1994 S.B. 718 § 27, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.881. Suspension or revocation of license, grounds - procedure, penalties. - 1. Upon written notice to a licensee, the director may suspend or revoke any license issued pursuant to sections 443.701 to 443.893 if the director makes a finding of one or more of the following in the notice that:

(1) Through separate acts or an act or a course of conduct, the licensee has violated any provision of sections 443.701 to 443.893, any rule promulgated by the director or any other law or rule of this state or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license would have warranted the director in refusing originally to issue such license;

(3) If a licensee is other than an individual, any ultimate equitable owner, officer, director or member of the licensed partnership, association, corporation or other person has so acted or failed to act as would be cause for suspending or revoking a license to that party as an individual.

2. No license shall be suspended or revoked, except as provided in this section, nor shall any licensee be subject to any other disciplinary proceeding without notice of the licensee's right to a hearing as provided in sections 443.701 to 443.893.

3. The director, on good cause shown that an emergency exists, may suspend any license for a period not to exceed thirty days, pending an investigation.

4. The provisions of section 443.835 shall not affect a licensee's civil or criminal liability for acts committed before such licensee surrenders the license.

5. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

6. Every license issued pursuant to sections 443.701 to 443.893 shall remain in force and effect until the license has expired without renewal, has been surrendered, revoked or suspended in accordance with the provisions of sections 443.701 to 443.893, except that, the director may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if no fact or condition exists which would have warranted the director to refuse originally to issue such license pursuant to sections 443.701 to 443.893.

7. Whenever the director revokes or suspends a license issued pursuant to sections 443.701 to 443.893, the director shall post public notice of such order and shall serve a copy of such order upon the licensee. Such order may be reviewed by the board.

8. When the director finds any person in violation of the grounds provided in subsection 9 of this section, the director may enter an order imposing one or more of the following disciplinary actions:

(1) Revocation of the license;

(2) Suspension of the license subject to reinstatement upon satisfying all reasonable conditions the director may specify;

(3) Placement of the licensee on probation for a period of time and subject to any reasonable conditions as the director may specify;

(4) Issuance of a reprimand; and

(5) Denial of a license.

9. The following acts shall constitute grounds for which the disciplinary actions specified in subsection 8 of this section may be taken:

(1) Being convicted or found guilty, regardless of pendency of an appeal, of a crime in any jurisdiction which involves fraud, dishonest dealings, or any other act involving moral turpitude;

(2) Fraud, misrepresentation, deceit or negligence in any mortgage financing transaction;

(3) A material or intentional misstatement of fact on an initial or renewal application;

(4) Failure to follow the director's rules with respect to placement of funds in escrow accounts;

(5) Insolvency or filing under any provision of the United States Bankruptcy Code as a debtor;

(6) Failure to account or deliver to any person any property upon demand of the person entitled to such accounting and delivery;

(7) Failure to disburse funds in accordance with agreements;

(8) Any misuse, misapplication or misappropriation of trust funds or escrow funds;

(9) Having a license, or the equivalent, to practice any profession or occupation revoked, suspended or otherwise acted against, including the denial of licensure by a licensing authority of this state or another state, territory or country for fraud, dishonest dealings or any other act involving moral turpitude;

(10) Failure to issue a satisfaction of mortgage when the mortgage has been executed and proceeds were not disbursed to the benefit of the mortgagor and when the mortgagor has fully paid the licensee's costs and commission;

(11) Failure to comply with any order of the director or rule made or issued pursuant to the provisions of sections 443.701 to 443.893;

(12) Engaging in activities regulated by sections 443.701 to 443.893 without a current, active license unless specifically exempted by the provisions of sections 443.701 to 443.893;

(13) Failure to pay timely any fee or charge due under the provisions of sections 443.701 to 443.893;

(14) Failure to maintain, preserve and keep available for examination, all books, accounts or other documents required by the provisions of sections 443.701 to 443.893 and the rules of the director;

(15) Refusal to permit an investigation or examination of the licensee's or the licensee's affiliates' books and records or refusal to comply with the director's subpoena or subpoena duces tecum;

(16) A pattern of substantially underestimating closing costs;

(17) Failure to comply with, or any violation of, any provision of sections 443.701 to 443.893.

10. A licensee shall be subject to the disciplinary actions specified in sections 443.701 to 443.893 for a violation of subsection 9 of this section by any officer, director, member, shareholder, joint venture, partner, ultimate equitable owner or employee of the licensee.

11. Such licensee shall be subject to suspension or revocation for employee actions only if there is a pattern of repeated violations by an employee or employees or the licensee has knowledge of the violation.

12. The procedures for the surrender, suspension, or revocation of a license shall be:

(1) The director may, after ten days' notice by certified mail to the licensee at the address set forth on the license, or in the case of a mortgage loan originator, the principal office of the residential mortgage loan broker employing or last employing the originator, stating the contemplated action and, in general, the grounds for such action and the date, time and place of a hearing on the action, and after providing the licensee with a reasonable opportunity to be heard prior to such action, revoke or suspend any license issued pursuant to sections 443.701 to 443.893 if the director finds that:

(a) The licensee has failed to comply with any provision of sections 443.701 to 443.893 or any order, decision, finding, rule or direction of the director lawfully made pursuant to the authority of sections 443.701 to 443.893; or

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the director to refuse to issue the license;

(2) Any licensee may surrender a license by delivering to the director written notice that the licensee thereby surrenders such license, but surrender shall not affect the licensee's civil or criminal liability for acts committed prior to surrender or entitle the licensee to a return of any part of the license fee.

(L. 1994 S.B. 718 § 28, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.883. Director to maintain a staff capable of investigations - licensees to open record for investigators. - The director shall at all times maintain staff and facilities adequate to receive, record and investigate complaints and inquiries made by any person concerning sections 443.701 to 443.893 and any licensees licensed pursuant to the provisions of sections 443.701 to 443.893. Each licensee shall open the licensee's books, records, documents and offices wherever situated to the director or the director's

appointees as needed to facilitate such investigations.
(L. 1994 S.B. 718 § 29, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.885. Report to be filed with director annually, contents. - On or before March first of each year, each residential mortgage loan broker, except exempt persons shall file a report with the director which shall disclose the following information with respect to the immediately preceding calendar year:

(1) A list of home mortgages granted, issued, originated or closed during the report period, with respect to which such licensee has had any connection. The list shall show for each census tract, in regions where such census tracts have been established and by zip code in all other regions, the number and aggregate dollar amount of applications for and the number granted and aggregate dollar amount of:

(a) Conventional mortgage loans;

(b) Mortgage loans insured under the National Housing Act, 12 U.S.C. 1701, et seq.; and

(c) Mortgage loans guaranteed under the provisions of the Federal Veterans' Benefits Act, 38 U.S.C. 3710, et seq.;

(2) List by zip code in those areas having no census tract:

(a) The total number of home mortgages on real estate situated in this state with respect to which the licensee has had any connection and which are in default on the last day of the reporting period; and

(b) The total number of claims paid during the reporting period on home mortgages with respect to which the licensee has had any connection, including the date of the first default thereon and the date each such foreclosure proceeding was instituted;

(3) If the director finds that another report that the licensee is required to compile is equivalent to the annual report of mortgage activity, then the director may accept such report as fulfilling the reporting requirements of this section;

(4) The director may also require by rule that licensees report such additional information as is necessary to assure compliance with the provisions of sections 443.701 to 443.893.
(L. 1994 S.B. 718 § 30, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

443.887. General rulemaking powers of director. - 1. In addition to such other powers as may be prescribed by sections 443.701 to 443.893, the director may promulgate rules consistent with the purpose of sections 443.701 to 443.893, including, but not limited to:

(1) Such rules in connection with the activities of licensees as may be necessary and appropriate for the protection of consumers in this state;

(2) Such rules as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of licensees;

(3) Such rules as may define the terms used in sections 443.701 to 443.893 and as may be necessary and appropriate to interpret and implement the provisions of sections 443.701 to 443.893; and

(4) Such rules as may be necessary for the enforcement of sections 443.701 to 443.893.

2. The director may make such specific ruling, demands and findings as the director may deem necessary for the proper conduct of the mortgage lending industry.
(L. 1994 S.B. 718 § 31, A.L. 1995 H.B. 63, et al., A.L. 2001 S.B. 538, A.L. 2009 H.B. 382)

443.889. Court action to recover compensation for services, proof that services performed by valid licensee required, exception. - Unless exempt from licensure pursuant to the provisions of sections 443.701 to 443.893, no person engaged in, or offering to engage in, any act or service for which a license is required pursuant to the provisions of sections 443.701 to 443.893 may bring or maintain any action in any court of this state to collect compensation for the performance of the licensable services without alleging and proving that the person was the holder of a valid residential mortgage license issued pursuant to the provisions of sections 443.701 to 443.893 at all times during the performance of such services.
(L. 1994 S.B. 718 § 32, A.L. 2009 H.B. 382)

443.891. Charge in support of removal or prohibition notice issued on certain findings of conduct. - 1. Upon making any one or more of the following preliminary findings, the director may issue a notice of charges against a licensee in support of an order imposing a fine, requiring restitution or

forfeiture, suspending or revoking a license, or an order of removal and prohibition, which order may remove and prohibit a named person from participating in loan brokering, mortgage brokering or mortgage brokerage service for any loan secured by real estate whether in the affairs of an exempt person or in the affairs of* any licensees under sections 443.701 to 443.893, or in the affairs of any depository** institution under the jurisdiction of the director. An order of removal or of prohibition may be permanent or for a specific term and may impose additional conditions including requiring restitution and imposition of a civil penalty not exceeding twenty-five thousand dollars per occurrence. The findings required by this section may be any one or more of the following:

(1) A finding that the person subject to the order has been convicted of a crime involving material financial loss to a licensee, a depository institution, a government-sponsored enterprise, a Federal Home Loan Bank, a Federal Reserve Bank or any other person;

(2) A finding that the person subject to the order has, in connection with the application for or procurement of a loan secured by real estate, made any material misstatement, misrepresentation, or omission. As used in this section, **"material"** means important information about which the director or board should be informed and which may influence a licensing or lending decision;

(3) A finding that the person subject to the order has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of mortgage fraud as defined in section 570.310, RSMo;

(4) A finding that the person subject to the order has violated any provision of sections 443.701 to 443.893.

2. If a hearing is requested, the director or his or her designee shall conduct a hearing under chapter 536, RSMo.

3. If the respondent defaults, consents to an order under this section, or if upon the record the director finds the grounds specified supporting an order, the director may issue such an order including conditions for restitution or for a civil penalty not to exceed twenty-five thousand dollars to be effective thirty days after service and to remain in effect and enforceable except to the extent it is stayed, modified, terminated or set aside by action of the director or a reviewing court.

(L. 1994 S.B. 718 § 33, A.L. 1995 H.B. 63, et al., A.L. 2008 H.B. 2188, A.L. 2009 H.B. 382)

*Word "of" omitted from original rolls.

**Word "depositary" appears in original rolls.

443.893. Receiver or conservator to be appointed by court, when - attorney general's duty. - When the director makes a finding that a receivership or conservatorship is necessary to protect consumers of a licensee from the consequences of the licensee's failure to comply with the provisions of sections 443.701 to 443.893 or other unsafe and unsound practice, the director shall request the attorney general of this state to petition the circuit court of Cole County or of the county in which the licensee is located to appoint a receiver or conservator for purposes of protecting consumers and resolving the affairs of the licensee.

(L. 1994 S.B. 718 § 34, A.L. 1995 H.B. 63, et al., A.L. 2009 H.B. 382)

REVERSE MORTGAGE ACT

443.901. Reverse mortgage act - definitions. - 1. Sections 443.901 to 443.912 shall be known and be cited as the "Missouri Reverse Mortgage Act".

2. For the purposes of Sections 443.901 to 443.912 the following terms mean:

(1) **"Authorized lender"** or **"lender"**, a lender authorized to engage in business as a bank, savings institution or credit union under the laws of the United States or this state, residential mortgage licensee who is licensed pursuant to sections 443.800 to 443.893, RSMo, or entity that is an exempt entity pursuant to sections 443.800 to 443.893, RSMo;

(2) **"Brokered"**, the act of helping to obtain for an investor or other entity, or from an investor or other entity, for a borrower, a residential mortgage loan, including a reverse mortgage loan;

(3) **"Originated"**, advertised, solicited, processed, for which a loan application is taken, or which is closed, committed for, or funded;

(4) **"Principal"** as it relates to reverse mortgages, the total of the net amount paid to, receivable by, contracted for, or paid, or payable, for the account of the borrower, and to the extent payment is deferred, additional charges permitted by Sections 443.901 to 443.912;

(5) **"Reverse mortgage loan"**, a loan originated, made or brokered by an authorized lender which:

(a) Is secured by residential real estate property;

(b) Provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence;

(c) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(d) Otherwise complies with the terms of Sections 443.901 to 443.912.

(L. 1995 H.B. 63, et al. § 1)

443.903. Reverse mortgage regulations. - Notwithstanding any other provisions of law to the contrary, reverse mortgage loans shall be governed by the following:

(1) Payment in whole or in part is permitted without penalty at any time during the period of the loan;

(2) An advance made under a reverse mortgage and interest on the advances have priority over a lien filed after the closing of a reverse mortgage loan;

(3) A reverse mortgage loan may provide for an interest rate which is fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the property;

(4) If a reverse mortgage loan provides for periodic advances to a borrower, the advances may not be reduced in amount or number based on an adjustment in the interest rate;

(5) Lenders failing to make loan advances as required in the loan agreement and failing to cure the default as required in the loan agreement shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the lender failed to make;

(6) The repayment requirement is also expressly subject to the following additional conditions:

(a) Temporary absences from the home not to exceed sixty consecutive days do not cause the mortgage to become due and payable;

(b) Temporary absences from the home exceeding sixty consecutive days, but less than six months, do not cause the mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a satisfactory manner;

(c) The lender's right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for loan contracts. Notwithstanding the applicable statute of limitations for loan contracts, the statute of limitations commences on the date that the mortgage becomes due and payable;

(d) The lender must prominently disclose any interest or other fees to be charged during the period that commences on the date that the mortgage becomes due and payable and ends when repayment in full is made;

(7) The following fees and charges may be charged to the borrower, and financed by the lender, in connection with a reverse mortgage loan, except for loans insured or guaranteed by agencies of the federal government in which case federal law or regulation shall apply:

(a) A nonrefundable origination fee not to exceed two percent of the principal;

(b) Fees and charges prescribed by law actually and necessarily paid to public officials for perfecting, releasing or satisfying a security interest related to the reverse mortgage loan;

(c) Recording taxes to perfect documents;

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

a. Fees or premiums for title examination, title insurance or similar purposes, including surveys;

b. Fees for preparation of a deed, settlement statement or other documents;

c. Fees for notarizing deeds and other documents;

d. Appraisal fees; and

e. Fees for credit reports;

(e) A charge for insurance against loss of, or damage to, property where no such coverage already exists;

(f) Fixed monthly servicing fees, repair administration fees and payment plan change fees;

(8) As a convenience to the borrower, reverse mortgage loan applications may be taken by the lender over the telephone or at the borrower's home and reverse mortgage loans may be closed by mail or at a title company's office.

(L. 1995 H.B. 63, et al. § 2, A.L. 1997 H.B. 633)

443.906. Reverse mortgage may be made regardless of certain other transactions. - Reverse mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions:

(1) Limitations on the purpose and use of future advances or any other mortgage proceeds;

(2) Limitations on future advances to a term of years, or limitations on the term of credit line advances;

(3) Limitations on the term during which future advances take priority over intervening advances;

(4) Requirements that a maximum mortgage amount be stated in the mortgage;

(5) Prohibitions on balloon payments;

(6) Prohibitions on compound interest;

(7) Interest rate limits under the usury statutes;

(8) Requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(L. 1995 H.B. 63, et al., § 3)

443.909. Treatment of payments for certain purposes. - Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals:

(1) Undisbursed funds shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals;

(2) This section applies to any law relating to payments, allowances, benefits or services provided on a means-tested basis by this state, including, but not limited to, supplemental security income, low-income energy assistance, property tax relief, medical assistance and general assistance.

(L. 1995 H.B. 63, et al., § 4)

443.912. Statement regarding counseling services on reverse mortgages. - No reverse mortgage loan commitment may be made by a lender unless the loan applicant attests in writing that the applicant received from the lender at the time of initial inquiry a statement regarding the advisability and availability of independent information and counseling services on reverse mortgages. Such statement may be in a form developed by the lender or the division of finance.

(L. 1995 H.B. 63, et al., § 5)

LOANS SECURED BY REAL ESTATE

443.930. Prohibited acts - constitutes mortgage fraud - no private right of action created. - 1. It is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate to:

(1) Employ a device, scheme, or artifice to defraud;

(2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section; or

(4) Influence, through extortion or bribery, the development, reporting, result, or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee, or other person from asking the appraiser to do one or more of the following:

(a) Consider additional property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

2. Such acts shall be deemed to constitute mortgage fraud.

3. This section shall not be construed to create a private right of action.

(L. 2008 H.B. 2188)

FIRST-TIME HOME BUYER SAVINGS ACCOUNT ACT

443.1001. Citation of law. - Sections 443.1001 to 443.1007 shall be known and may be cited as the “First-Time Home Buyer Savings Account Act”.

(L. 2018 H.B. 1796)

443.1003. Definitions. - As used in sections 443.1001 to 443.1007, the following terms mean:

(1) “**Account holder**”, an individual who establishes an account with a financial institution that is designated as a first-time

home buyer savings account in accordance with section 443.1004;

(2) "**Department**", the department of revenue;

(3) "**Eligible expenses**", a down payment and any closing costs included on a real estate settlement statement including, but not limited to, appraisal fees, mortgage origination fees, and inspection fees;

(4) "**Financial institution**", any state bank, state trust company, savings and loan association, federally chartered credit union doing business in this state, credit union chartered by the state of Missouri, national bank, broker-dealer, mutual fund, insurance company, or other similar financial entity qualified to do business in this state;

(5) "**First-time home buyer**", an individual who:

(a) Has never owned or purchased under contract for deed, either individually or jointly, a single-family, owner-occupied primary residence including, but not limited to, a condominium unit or a manufactured or mobile home that was assessed and taxed as real property; or

(b) As a result of the individual's dissolution of marriage, has not been listed on a property title for at least three consecutive years;

(6) "**First-time home buyer savings account**" or "**account**", an account with a financial institution designated as such in accordance with subsection 1 of section 443.1004;

(7) "**Qualified beneficiary**", a first-time home buyer designated by an account holder for whose eligible expenses the moneys in a first-time home buyer savings account are or will be used.

(L. 2018 H.B. 1796)

443.1004. Designation of first-time home buyer savings account, use of - qualified beneficiary - limitations on accounts - service fee. - 1. Beginning January 1, 2019, any individual may open an account with a financial institution and designate the account, in its entirety, as a first-time home buyer savings account to be used to pay or reimburse a qualified beneficiary's eligible expenses for the purchase of his or her primary residence in Missouri. An individual may be the account holder of multiple accounts, and an individual may jointly own the account with another person if such persons file a married filing combined income tax return. To be eligible for the tax deduction under section 143.1150, an account holder shall comply with the requirements of this section.

2. An account holder shall designate, no later than April fifteenth of the year following the tax year during which the account was established, a first-time home buyer as the qualified beneficiary of the first-time home buyer savings account. The account holder may designate himself or herself as the qualified beneficiary. The account holder may change the designated qualified beneficiary at any time, but no first-time home buyer savings account shall have more than one qualified beneficiary at any time. No account holder shall have multiple accounts with the same qualified beneficiary, but an individual may be designated as the qualified beneficiary of multiple accounts.

3. (1) The following limits apply to a first-time home buyer savings account:

(a) The maximum contribution to a first-time home buyer savings account is one thousand six hundred dollars per year for an individual and three thousand two hundred dollars per year for account holders who file a married filing combined income tax return;

(b) The maximum amount of all contributions for all tax years to a first-time home buyer savings account is twenty thousand dollars; and

(c) The maximum total amount in an account is thirty thousand dollars.

(2) If a limit in subdivision (1) of this subsection is exceeded, then thereafter no interest or other income earned on the investment of moneys in the first-time home buyer savings account shall be included in the tax deduction under section 143.1150.*

(3) Moneys may remain in a first-time home buyer savings account for an unlimited duration without the interest or income being subject to recapture or penalty.

4. The account holder shall not use moneys in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution. The account holder shall be responsible for maintaining documentation for the first-time home buyer savings account and for eligible expenses related to the qualified beneficiary's purchase of a primary residence.

(L. 2018 H.B. 1796)

*Word "; and" appears in original rolls.

443.1005. Use of account moneys - withdrawals, subject to recapture, when, penalties - death of account holder, effect of. - 1. (1) For purposes of the tax benefit conferred under the first-time home buyer

savings account act, the moneys in a first-time home buyer savings account may be:

(a) Used for eligible expenses related to a qualified beneficiary's purchase of his or her primary residence located in this state;

(b) Used for eligible expenses related to a qualified beneficiary's purchase of his or her primary residence located outside this state if the qualified beneficiary is active-duty military and was stationed in Missouri for any time after the creation of the account;

(c) Used for expenses that would have qualified under paragraph (a) or (b) of this subdivision, but the contract for purchase did not close;

(d) Transferred to another newly created first-time home buyer savings account; and

(e) Used to pay a service fee that is deducted by the financial institution.

(2) Subdivision (1) of this subsection* shall apply whether the qualified beneficiary is the sole owner of the primary residence or joint owner with another person who does not qualify as a qualified beneficiary. Moneys in a first-time home buyer savings account shall not be used for the purposes under paragraphs (a), (b), and (c) of subdivision (1) of this subsection related to the purchase of a manufactured or mobile home that is not taxed as real property.

(3) The title of any home purchased with moneys from a first-time home buyer savings account shall not transfer for at least two years unless reasonable circumstances exist that were unforeseen at the time the home was purchased. The first-time home buyer shall request an exception from the department.

2. Moneys withdrawn from a first-time home buyer savings account shall be subject to recapture in the tax year in which they are withdrawn if:

(1) At the time of the withdrawal, it has been less than a year since the first deposit in the first-time home buyer savings account; or

(2) The moneys are used for any purpose other than those specified under subsection 1 of this section.

The recapture shall be an amount equal to the moneys withdrawn and shall be added to the Missouri adjusted gross income of the account holder or, if the account holder is not living, the qualified beneficiary.

3. If any moneys are subject to recapture under subsection 2 of this section, the account holder shall pay to the department a penalty in the same tax year as the recapture. If the withdrawal was made ten or fewer years after the first deposit in the first-time home buyer savings account, the penalty shall be equal to five percent of the amount subject to recapture, and, if the withdrawal was made more than ten years after the first deposit in the account, the penalty shall be equal to ten percent of the amount subject to recapture. These penalties shall not apply if:

(1) The withdrawn moneys are used for eligible expenses related to a qualified beneficiary's purchase of his or her primary residence outside of the state; or

(2) The withdrawn moneys are from a first-time home buyer savings account for which the qualified beneficiary died, and the account holder does not designate a new qualified beneficiary during the same tax year.

4. If the account holder dies or, if the first-time home buyer savings account is jointly owned, the account holders die and the account does not have a surviving transfer-on-death beneficiary, then all of the moneys in the account that were used for a tax deduction under section 143.1150 shall be subject to recapture in the tax year of the death or deaths, but no penalty shall be due to the department.
(L. 2018 H.B. 1796)
*Word “section” appears in original rolls.

443.1006. Annual reporting, forms - rulemaking authority. - 1. The department shall establish forms for an account holder to annually report information about a first-time home buyer savings account including, but not limited to, how the moneys withdrawn from the fund are used and shall identify any supporting documentation that is required to be maintained. To be eligible for the tax deduction under section 143.1150, an account holder shall annually file with the account holder's state income tax return all forms required by the department under this section, the 1099 form for the account issued by the financial institution, and any other supporting documentation the department requires.

2. The department of revenue may promulgate rules and regulations necessary to administer the provisions of the first-time home buyer savings account act. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to

chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2018, shall be invalid and void.
(L. 2018 H.B. 1796)

443.1007. Financial institutions, actions not responsible or liable for. - 1. No financial institution shall be required to:

(1) Designate an account as a first-time home buyer savings account or designate the beneficiaries of an account in the financial institution's account contracts or systems or in any other way;

(2) Track the use of moneys withdrawn from a first-time home buyer savings account; or

(3) Report any information to the department or any other governmental agency that is not otherwise required by law.

2. No financial institution shall be responsible or liable for:

(1) Determining or ensuring that an account holder is eligible for a tax deduction under section 143.1150;

(2) Determining or ensuring that moneys in the account are used for eligible expenses; or

(3) Reporting or remitting taxes or penalties related to use of moneys in a first-time home buyer savings account.

3. In implementing section 143.1150 and sections 443.1001 to 443.1007, the department shall not establish any administrative, reporting, or other requirements on financial institutions that are outside the scope of normal account procedures.
(L. 2018 H.B. 1796)

CHAPTER 451

MARRIAGE, MARRIAGE CONTRACTS, AND RIGHTS OF MARRIED WOMEN

451.250. Married persons to hold real and personal property as separate property - liable for what. - 1. All real estate and any personal property, including rights in action, belonging to any man or woman at his or her marriage, or which may have come to him or her during coverture, by gift, bequest or inheritance, or by purchase with his or her separate money or means, or be due as the wages of his or her separate labor, or has grown out of any violation of his or her personal rights, shall, together with all income, increase and profits thereof, be and remain his or her separate property and under his or her sole control, and shall not be liable to be taken by any process of law for the debts of his wife or her husband.

2. This section shall not affect the title of any husband or wife to any personal property reduced to his or her possession with the express assent of his or her spouse; provided, that said personal property shall not be deemed to have been reduced to possession by the husband or wife by his or her use, occupancy, care or protection thereof, but the same shall remain his or her separate property, unless by the terms of said assent, in writing, full authority shall have been given by the husband or wife to the spouse to sell, encumber or otherwise dispose of the same for his or her own use and benefit, but such property shall be subject to execution for the payments of the debts of the spouse contracted before or during marriage, and for any debt or liability of his or her spouse created for necessaries for the spouse or family; and any such married man or woman may, in his or her own name and without joining his or her spouse, as a party plaintiff institute and maintain any action, in any of the courts of this state having jurisdiction, for the recovery of any such personal property, including rights in action, as aforesaid, with the same force and effect as if such married man or woman was * not married; provided, any judgment for costs in any such proceeding rendered against any such married spouse, may be satisfied out of any separate property of such married spouse subject to execution; provided, that before any such execution shall be levied upon any separate estate of a married spouse, he or she shall have been made a party to the action, and all questions involved shall have been therein determined, and shall be recited in the judgment and the execution thereon.

(RSMo 1939 § 3390, A.L. 2001 H.B. 537)
Prior revisions: 1929 § 3003; 1919 § 7328; 1909 § 8309
*Word "a" appears in original rolls.

(1954) Where husband and wife each furnished funds to purchase farm and each supplied livestock and contributed to purchase of tools, but husband actually controlled and operated farm, wife was not entitled, after eight years, to one-half of proceeds of sale of some of the stock and tools. Herbert v. Herbert (A.), 272 S.W.2d 705.

(1955) Wife held entitled to sue husband under § 451.250 for premarital personal tort committed by him in automobile accident. Hamilton v. Fulkerson (Mo.), 285 S.W.2d 642. Comment Mo. L. Rev. Vol. XXII, p. 216 (1957).

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CHAPTER 570

ROBBERY, STEALING AND RELATED OFFENSES

Sec.

CROSS REFERENCES

Criminal activity forfeiture act, (CAFA), definitions applicable to this chapter, RSMo 513.605.

Minimum prison terms for repeat offenders for the commission of certain crimes in this chapter, RSMo 558.019.

Sale or possession of vehicles or certain equipment with altered numbers, penalty, RSMo 301.390.

Serial and other numbers, defacing on vehicles and certain equipment, penalty, RSMo 301.400.

570.030. Stealing - penalties. - 1. A person commits the offense of stealing if he or she:

(1) Appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion;

(2) Attempts to appropriate anhydrous ammonia or liquid nitrogen of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion; or

(3) For the purpose of depriving the owner of a lawful interest therein, receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

2. The offense of stealing is a class A felony if the property appropriated consists of any of the following containing any amount of anhydrous ammonia: a tank truck, tank trailer, rail tank car, bulk storage tank, field nurse, field tank or field applicator.

3. The offense of stealing is a class B felony if:

(1) The property appropriated or attempted to be appropriated consists of any amount of anhydrous ammonia or liquid nitrogen;

(2) The property consists of any animal considered livestock as the term livestock is defined in section 144.010, or any captive wildlife held under permit issued by the conservation commission, and the value of the animal or animals appropriated exceeds three thousand dollars and that person has previously been found guilty of appropriating any animal considered livestock or captive wildlife held under permit issued by the conservation commission. Notwithstanding any provision of law to the contrary, such person shall serve a minimum prison term of not less than eighty percent of his or her sentence before he or she is eligible for probation, parole, conditional release, or other early release by the department of corrections;

(3) A person appropriates property consisting of a motor vehicle, watercraft, or aircraft, and that person has previously been found guilty of two stealing-related offenses committed on two separate occasions where such offenses occurred within ten years of the date of occurrence of the present offense;

(4) The property appropriated or attempted to be appropriated consists of any animal considered livestock as the term is defined

in section 144.010 if the value of the livestock exceeds ten thousand dollars; or

(5) The property appropriated or attempted to be appropriated is owned by or in the custody of a financial institution and the property is taken or attempted to be taken physically from an individual person to deprive the owner or custodian of the property.

4. The offense of stealing is a class C felony if the value of the property or services appropriated is twenty-five thousand dollars or more.

5. The offense of stealing is a class D felony if:

(1) The value of the property or services appropriated is seven hundred fifty dollars or more;

(2) The offender physically takes the property appropriated from the person of the victim; or

(3) The property appropriated consists of:

(a) Any motor vehicle, watercraft or aircraft;

(b) Any will or unrecorded deed affecting real property;

(c) Any credit device, debit device or letter of credit;

(d) Any firearms;

(e) Any explosive weapon as defined in section 571.010;

(f) Any United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open;

(g) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri;

(h) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States;

(i) Any book of registration or list of voters required by chapter 115;

(j) Any animal considered livestock as that term is defined in section 144.010;

(k) Any live fish raised for commercial sale with a value of seventy-five dollars or more;

(l) Any captive wildlife held under permit issued by the conservation commission;

(m) Any controlled substance as defined by section 195.010;

(n) Ammonium nitrate;

(o) Any wire, electrical transformer, or metallic wire associated with transmitting telecommunications, video, internet, or voice over internet protocol service, or any other device or pipe that is associated with conducting electricity or transporting natural gas or other combustible fuels; or

(p) Any material appropriated with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues.

6. The offense of stealing is a class E felony if:

(1) The property appropriated is an animal;

(2) The property is a catalytic converter; or

(3) A person has previously been found guilty of three stealing-related offenses committed on three separate occasions where such offenses occurred within ten years of the date of occurrence of the present offense.

7. The offense of stealing is a class D misdemeanor if the property is not of a type listed in subsection 2, 3, 5, or 6 of this section, the property appropriated has a value of less than one hundred fifty dollars, and the person has no previous findings of guilt for a stealing-related offense.

8. The offense of stealing is a class A misdemeanor if no other penalty is specified in this section.

9. If a violation of this section is subject to enhanced punishment based on prior findings of guilt, such findings of guilt shall be pleaded and proven in the same manner as required by section 558.021.

10. The appropriation of any property or services of a type listed in subsection 2, 3, 5, or 6 of this section or of a value of seven hundred fifty dollars or more may be considered a separate felony and may be charged in separate counts.

11. The value of property or services appropriated pursuant to one scheme or course of conduct, whether from the same or several owners and whether at the same or different times, constitutes a single criminal episode and may be aggregated in determining the grade of the offense, except as set forth in subsection 10 of this section.

(L. 1977 S.B. 60, A.L. 1981 S.B. 202, A.L. 1985 H.B. 333 & 64, A.L. 1996 S.B. 657, A.L. 1997 H.B. 635, A.L. 1998 H.B. 1147, et al., A.L. 2001 H.B. 471 merged with S.B. 89 & 37, A.L. 2002 H.B. 1888 merged with S.B. 712, A.L. 2003 S.B. 5, A.L. 2004 S.B. 1211, A.L. 2005 H.B. 353, A.L. 2009 H.B. 62, A.L. 2013 S.B. 9, A.L. 2014 S.B. 491, A.L. 2016 S.B. 624, A.L. 2021 H.B. 69 merged with H.B. 271)

CROSS REFERENCE

Child support, retention of erroneously paid support to be crime of stealing, when, 454.531

(1984) Conviction for “stealing by deceit” requires proof that the victim relied on the defendant's false pretense or representation; no reliance is shown when store employees are fully aware of acts later sought to be made the basis of a false pretense. State v. Young (Mo.App.), 672 S.W.2d 366.

(1984) One can be found guilty of stealing property to which he has legal title. State v. Smith (Mo.App.), 684 S.W.2d 576.

(1984) Owner of the stolen property need not be experienced in valuating property to express an opinion of its value. The owner's opinion of the value of the stolen property may be considered substantial evidence of its worth. State v. Reilly (Mo. banc), 674 S.W.2d 530.

(1986) This section does not apply where a debtor uses false information to get an extension on an outstanding debt. State v. Grainger, 721 S.W.2d 237 (Mo.App.).

570.090. Forgery - penalty. - 1. A person commits the offense of forgery if, with the purpose to defraud, the person:

(1) Makes, completes, alters or authenticates any writing so that it purports to have been made by another or at another time or place or in a numbered sequence other than was in fact the case or with different terms or by authority of one who did not give such authority; or

(2) Erases, obliterates or destroys any writing; or

(3) Makes or alters anything other than a writing, including receipts and universal product codes, so that it purports to have a genuineness, antiquity, rarity, ownership or authorship which it does not possess; or

(4) Uses as genuine, or possesses for the purpose of using as genuine, or transfers with the knowledge or belief that it will be used as genuine, any writing or other thing including receipts and universal product codes, which the person knows has been made or altered in the manner described in this section.

2. The offense of forgery is a class D felony.

(L. 1977 S.B. 60, A.L. 2002 H.B. 1888, A.L. 2014 S.B. 491)

(2013) Prosecution for forgery based on defendant's signature on employment application containing false Social Security number is not preempted by federal immigration law. State v. Diaz-Rey, 397 S.W.3d 5 (Mo.App.E.D.).

570.095. Filing false documents, offense of, elements - penalty, enhancement - restitution, when - system to log suspected fraudulent documents, procedure. - 1. A person commits the offense of filing false documents if:

(1) With the intent to defraud, deceive, harass, alarm, or negatively impact financially, or in such a manner reasonably calculated to deceive, defraud, harass, alarm, or negatively impact financially, he or she files, causes to be filed or recorded, or attempts to file or record, creates, uses as genuine, transfers or has transferred, presents, or prepares with knowledge or belief that it will be filed, presented, recorded, or transferred to the secretary of state or the secretary's designee, to the recorder of deeds of any county or city not within a county or the recorder's designee, to any municipal, county, district, or state government entity, division, agency, or office, or to any credit bureau or financial institution any of the following types of documents:

(a) Common law lien;

(b) Uniform commercial code filing or record;

(c) Real property recording;

(d) Financing statement;

(e) Contract;

(f) Warranty, special, or quitclaim deed;

(g) Quiet title claim or action;

(h) Deed in lieu of foreclosure;

(i) Legal affidavit;

(j) Legal process;

(k) Legal summons;

(l) Bills and due bills;

(m) Criminal charging documents or materially false criminal charging documents;

(n) Any other document not stated in this subdivision that is related to real property; or

(o) Any state, county, district, federal, municipal, credit bureau, or financial institution form or document; and

(2) Such document listed under subdivision (1) of this subsection contains materially false information; is fraudulent; is a forgery, as defined under section 570.090; lacks the consent of all parties listed in a document that requires mutual consent; or is invalid under Missouri law.

2. Filing false documents under this section is a class D felony for the first offense except the following circumstances shall be a class C felony:

(1) The defendant has been previously found guilty or pleaded guilty to a violation of this section;

(2) The victim or named party in the matter:

(a) Is an official elected to municipal, county, district, federal, or statewide office;

(b) Is an official appointed to municipal, county, district, federal, or statewide office; or

(c) Is an employee of an official elected or appointed to municipal, county, district, federal, or statewide office;

(3) The victim or named party in the matter is a judge or magistrate of:

(a) Any court or division of the court in this or any other state or an employee thereof; or

(b) Any court system of the United States or is an employee thereof;

(4) The victim or named party in the matter is a full-time, part-time, or reserve or auxiliary peace officer, as defined under section 590.010, who is licensed in this state or any other state;

(5) The victim or named party in the matter is a full-time, part-time, or volunteer firefighter in this state or any other state;

(6) The victim or named party in the matter is an officer of federal job class 1811 who is empowered to enforce United States laws;

(7) The victim or named party in the matter is a law enforcement officer of the United States as defined under 5 U.S.C. Section 8401(17)(A) or (D);

(8) The victim or named party in the matter is an employee of any law enforcement or legal prosecution agency in this state, any other state, or the United States;

(9) The victim or named party in the matter is an employee of a federal agency that has agents or officers of job class 1811 who are empowered to enforce United States laws or is an employee of a federal agency that has law enforcement officers as defined under 5 U.S.C. Section 8401(17)(A) or (D); or

(10) The victim or named party in the matter is an officer of the railroad police as defined under section 388.600.

3. For a penalty enhancement as described under subsection 2 of this section to apply, the occupation of the victim or named party shall be material to the subject matter of the document or documents filed or the relief sought by the document or documents filed, and the occupation of the victim or named party shall be materially connected to the apparent reason that the victim has been named, victimized, or involved. For purposes of subsection 2 of this section and this subsection, a person who has retired or resigned from any agency, institution, or occupation listed under subsection 2 of this section shall be considered the same as a person who remains in employment and shall also include the following family members of a person listed under subdivisions (2) to (9) of subsection 2 of this section:

(1) Such person's spouse;

(2) Such person or such person's spouse's ancestor or descendant by blood or adoption; or

(3) Such person's stepchild while the marriage creating that relationship exists.

4. Any person who pleads guilty or is found guilty under subsections 1 to 3 of this section shall be ordered by the court to make full restitution to any person or entity that has sustained actual losses or costs as a result of the actions of the defendants. Such restitution shall not be paid in lieu of jail or prison time but rather in addition to any jail or prison time imposed by the court.

5. (1) Nothing in this section shall limit the power of the state to investigate, charge, or punish any person for any conduct that constitutes a crime by any other statute of this state or the United States.

(2) No receiving entity shall be required under this section to retain the filing or record for prosecution under this section. A filing or record being rejected by the receiving entity shall not be used as an affirmative defense.

6. (1) Any agency of the state, a county, or a city not within a county that is responsible for or receives document filings or records, including county recorders of deeds and the secretary of state's office, shall, by January 1, 2019, impose a system in which the documents that have been submitted to the receiving agency, or those filings rejected by the secretary of state under its legal authority, are logged or noted in a ledger, spreadsheet, or similar recording method if the filing or recording officer or employee believes the filings or records appear to be fraudulent or contain suspicious language. The receiving agency shall make noted documents available for review by:

(a) The jurisdictional prosecuting or circuit attorney or such attorney's designee;

(b) The county sheriff or the sheriff's designee;

(c) The police chief of a county or city not within a county or such chief's designee; or

(d) A commissioned peace officer as defined under section 590.010.

Review of such documents is permissible for the agent or agencies under this subdivision without the need of a grand jury subpoena or court order. No fees or monetary charges shall be levied on the investigative agents or agencies for review of documents noted in the ledger or spreadsheet. The ledger or spreadsheet and its contents shall be retained by the agency that controls entries into such ledger or spreadsheet for a minimum of three years from the earliest entry listed in the ledger or spreadsheet.

(2) The receiving entity shall, upon receipt of a filing or record that has been noted as a suspicious filing or record, notify the chief law enforcement officer or such officer's designee of the county and the prosecutor or the prosecutor's designee of the county of the filing's or record's existence. Such notification shall be made within two business days of the filing or record having been received. Notification may be accomplished via email or via paper memorandum.

(3) No agency receiving the filing or record shall be required under this section to notify the person conducting the filing or record that the filing or record is entered as a logged or noted filing or record.

(4) Reviews to ensure compliance with the provisions of this section shall be the responsibility of any commissioned peace officer. Findings of noncompliance shall be reported to the jurisdictional prosecuting or circuit attorney or such attorney's designee by any commissioned peace officer who has probable cause to believe that the noncompliance has taken place purposely, knowingly, recklessly, or with criminal negligence, as described under section 562.016.

7. To petition for a judicial review of a filing or record that is believed to be fraudulent, false, misleading, forged, or contains materially false information, a petitioner may file a probable cause statement that delineates the basis for the belief that the filing or record is materially false, contains materially false information, is a forgery, is fraudulent, or is misleading. This probable cause statement shall be filed in the associate or circuit court of the county in which the original filing or record was transferred, received, or recorded.

8. A filed petition under this section shall have an initial hearing date within twenty business days of the date the petition is filed with the court. A court ruling of invalid shall be evidence that the original filing or record was not accurate, true, or correct. A court ruling of invalid shall be retained or recorded at the original receiving entity. The receiving entity shall waive all filing or recording fees associated with the filing or recording of the court ruling document in this subsection. Such ruling may be forwarded to credit bureaus or other institutions at the request of the petitioner via motion to the applicable court at no additional cost to the petitioner.

9. If a filing or record is deemed invalid, court costs and fees are the responsibility of the party who originally initiated the filing or record. If the filing or record is deemed valid, no court costs or fees, in addition to standard filing fees, shall be assessed.

(L. 2018 H.B. 1769)

570.110. Issuing a false instrument or certificate - penalty. - 1. A person commits the offense of issuing a false instrument or certificate when, being authorized by law to take proof or acknowledgment of any instrument which by law may be recorded, or being authorized by law to make or issue official certificates or other official written instruments, he or she issues such an instrument or certificate, or makes the same with the purpose that it be issued, knowing:

(1) That it contains a false statement or false information; or

(2) That it is wholly or partly blank.

2. The offense of issuing a false instrument or certificate is a class A misdemeanor.

(L. 1977 S.B. 60, A.L. 2014 S.B. 491)

(1996) "Issue" means to deliver from authority and does not require public distribution or circulation. State v. Moriarty, 914 S.W.2d 416 (Mo.App.W.D.).

570.120. Crime of passing bad checks, penalty - actual notice given, when - administrative handling costs, amount, deposit in fund - use of fund - additional costs, amount - payroll checks, action, when - service charge may be collected - return of bad check to depositor by financial institution must be on condition that issuer is identifiable. - 1. A person commits the offense of passing a bad check when he or she:

(1) With the purpose to defraud, makes, issues or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that it will not be paid by the drawee, or that there is no such drawee; or

(2) Makes, issues, or passes a check or other similar sight order or any other form of presentment involving the transmission of account information for the payment of money, knowing that there are insufficient funds in or on deposit with that account for the payment of such check, sight order, or other form of presentment involving the transmission of account information in full and all other checks, sight orders, or other forms of presentment involving the transmission of account information upon such funds then outstanding, or that there is no such account or no drawee and fails to pay the check or sight order or other form of presentment involving the transmission of account information within ten days after receiving actual notice in writing that it has not been paid because of insufficient funds or credit with the drawee or because there is no such drawee.

2. As used in subdivision (2) of subsection 1 of this section, "actual notice in writing" means notice of the nonpayment which is actually received by the defendant. Such notice may include the service of summons or warrant upon the defendant for the initiation of the prosecution of the check or checks which are the subject matter of the prosecution if the summons or warrant contains information of the ten-day period during which the instrument may be paid

and that payment of the instrument within such ten-day period will result in dismissal of the charges. The requirement of notice shall also be satisfied for written communications which are tendered to the defendant and which the defendant refuses to accept.

3. The face amounts of any bad checks passed pursuant to one course of conduct within any ten-day period may be aggregated in determining the grade of the offense.

4. The offense of passing bad checks is a class A misdemeanor, unless:

(1) The face amount of the check or sight order or the aggregated amounts is seven hundred fifty dollars or more; or

(2) The issuer had no account with the drawee or if there was no such drawee at the time the check or order was issued,

in which case passing a bad check is a class E felony.

5. In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action pursuant to the provisions of this section shall collect from the issuer in such action an administrative handling cost. The cost shall be twenty-five dollars for checks of less than one hundred dollars, and fifty dollars for checks of one hundred dollars but less than two hundred fifty dollars. For checks of two hundred fifty dollars or more an additional fee of ten percent of the face amount shall be assessed, with a maximum fee for administrative handling costs not to exceed seventy-five dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, the costs provided for in this subsection shall be deposited by the county treasurer into the administrative handling cost fund, established under section 559.100. Notwithstanding any law to the contrary, in addition to the administrative handling cost, the prosecuting attorney or circuit attorney shall collect an additional cost of five dollars per check for deposit to the Missouri office of prosecution services fund established in subsection 2 of section 56.765. All moneys collected pursuant to this section which are payable to the Missouri office of prosecution services fund shall be transmitted at least monthly by the county treasurer to the director of revenue who shall deposit the amount collected pursuant to the credit of the Missouri office of prosecution services fund under the procedure established pursuant to subsection 2 of section 56.765.

6. Notwithstanding any other provision of law to the contrary:

(1) In addition to the administrative handling costs provided for in subsection 5 of this section, the prosecuting attorney or circuit attorney may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, which along with the face amount of the check, shall be turned over to the party to whom the bad check was issued;

(2) If a check that is dishonored or returned unpaid by a financial institution is not referred to the prosecuting attorney or circuit attorney for any action pursuant to the provisions of this section, the party to whom the check was issued, or his or her agent or assignee, or a holder, may collect from the issuer, in addition to the face amount of the check, a reasonable service charge, not to exceed twenty-five dollars, plus an amount equal to the actual charge by the depository institution for the return of each unpaid or dishonored instrument.

7. When any financial institution returns a dishonored check to the person who deposited such check, it shall be in substantially the same physical condition as when deposited, or in such condition as to provide the person who deposited the check the information required to identify the person who wrote the check.

(L. 1977 S.B. 60, A.L. 1989 S.B. 310, A.L. 1992 S.B. 705, A.L. 1993 S.B. 180, A.L. 2001 H.B. 80, A.L. 2002 H.B. 1888, A.L. 2005 H.B. 353, A.L. 2013 H.B. 215, A.L. 2014 S.B. 491)

CROSS REFERENCE

Taxes paid with bad checks, penalty, 139.235

570.125. Fraudulently stopping payment on an instrument - penalties. - 1. A person commits the offense of fraudulently stopping payment of an instrument if he or she, with the purpose to defraud, stops payment on a check, draft, or debit device used in payment for the receipt of goods or services.

2. The offense of fraudulently stopping payment of an instrument is a class A misdemeanor, unless the face amount of the check or draft is seven hundred fifty dollars or more or, if the stopping of payment of more than one check or draft is involved in the same course of conduct, the aggregate amount is seven hundred fifty dollars or more, in which case the offense is a class E felony.

3. It shall be prima facie evidence of a violation of this section if a person stops payment on a check, draft, or debit device and fails to make good the check, draft, or debit device transaction, or fails to return or make and comply with reasonable arrangements to return the property for which the check, draft, or debit device was used in the same or substantially the same condition as when received within ten days after notice in writing from the payee that the check, draft, or debit device transaction has not been paid because of a stop payment order by the issuer to the drawee.

4. **"Notice in writing"** means notice deposited as certified or registered mail in the United States mail and addressed to the issuer at his address as it appears on the dishonored check, draft, or debit device transaction or to his last known address. The notice shall contain a statement that failure to make good the check, draft, or debit device transaction within ten days of receipt of the notice may subject the issuer to criminal prosecution.

(L. 1983 S.B. 75, A.L. 1985 S.B. 264, A.L. 2002 H.B. 1888, A.L. 2014 S.B. 491)

570.130. Fraudulent use of a credit device or debit device - penalty. - 1. A person commits the offense of fraudulent use of a credit device or debit device if he or she uses a credit device or debit device for the purpose of obtaining services or property, knowing that:

(1) The device is stolen, fictitious or forged; or

(2) The device has been revoked or cancelled; or

(3) For any other reason his or her use of the device is unauthorized; or

(4) Uses a credit device or debit device for the purpose of paying property taxes and knowingly cancels such charges or payment without just cause. It shall be prima facie evidence of a violation of this section if a person cancels such charges or payment after obtaining a property tax receipt to obtain license tags from the Missouri department of revenue.

2. The offense of fraudulent use of a credit device or debit device is a class A misdemeanor unless the value of the property tax or the value of the property or services obtained or sought to be obtained within any thirty-day period is seven hundred fifty dollars or more, in which case fraudulent use of a credit device or debit device is a class E felony.

(L. 1977 S.B. 60, A.L. 1999 S.B. 328, et al., A.L. 2002 H.B. 1888 merged with S.B. 895, A.L. 2014 S.B. 491)

570.135. Fraudulent procurement of a credit or debit card - penalty - limitation of liability. - 1. A person commits the offense of fraudulent procurement of a credit or debit device if he or she:

(1) Knowingly makes or causes to be made, directly or indirectly, a false statement regarding another person for the purpose of fraudulently procuring the issuance of a credit or debit device;

(2) Knowingly obtains a means of identification of another person without the authorization of that person and uses that means of identification fraudulently to obtain, or attempt to obtain, credit, goods or services in the name of the other person without the consent of that person; or

(3) Knowingly possesses a fraudulently obtained credit or debit device.

2. The offense of fraudulent procurement of a credit or debit device is a class A misdemeanor.

3. Notwithstanding any other provision of this section, no corporation, proprietorship, partnership, limited liability company, limited liability partnership or other business entity shall be criminally liable under this section for accepting applications for credit or debit devices or for the use of a credit or debit device in any transaction, absent clear and convincing evidence that such business entity conspired with or was a part of the fraudulent procuring of the issuance of a credit or debit device.

(L. 1999 S.B. 386 § 2, A.L. 2014 S.B. 491, A.L. 2016 S.B. 624)

570.140. Deceptive business practice - penalty. - 1. A person commits the offense of deceptive business practice if in the course of engaging in a business, occupation or profession, he or she recklessly:

(1) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) Sells, offers, displays for sale, or delivers less than the represented quantity of any commodity or service;

(3) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he or she furnishes the weight or measure;

(4) Sells, offers, or exposes for sale adulterated or mislabeled commodities;

(5) Makes a false or misleading written statement for the purpose of obtaining property or credit;

(6) Promotes the sale of property or services by a false or misleading statement in any advertisement; or

(7) Advertises in any manner the sale of property or services with the purpose not to sell or provide the property or services:

(a) At the price which he or she offered them;

(b) In a quantity sufficient to meet the reasonably expected public demand, unless the quantity is specifically stated in the advertisement; or

(c) At all.

2. The offense of deceptive business practice is a class A misdemeanor.

(L. 1977 S.B. 60, A.L. 2014 S.B. 491)

570.180. Defrauding secured creditors - penalty. - 1. A person commits the offense of defrauding secured creditors if he or she destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to defraud the holder of the security interest.

2. The offense of defrauding secured creditors is a class A misdemeanor unless the amount remaining to be paid on the secured debt, including interest, is seven hundred fifty dollars or more, in which case defrauding secured creditors is a class E felony.

(L. 1977 S.B. 60, A.L. 2014 S.B. 491)

570.217. Misapplication of funds of a financial institution - penalties. - 1. A person commits the offense of misapplication of funds of a financial institution if, being an officer, director, agent, or employee of, or connected in any capacity with, any financial institution, he or she embezzles, appropriates, or purposely misapplies any of the money, funds, or credits of such financial institution or any moneys, funds, assets, or securities entrusted to the custody or care of such financial institution, or to the custody or care of any such agent, officer, director, employee, or receiver.

2. The offense of misapplication of funds of a financial institution is a class E felony, unless the amount embezzled, appropriated, or misapplied is seven hundred fifty dollars or more, in which case it is a class D felony.

(L. 1985 H.B. 408 § 570.195, A.L. 1991 H.B. 206, A.L. 2014 S.B. 491)

570.219. False entries in the records of a financial institution with intent to defraud - penalty. - 1. A person commits the offense of making false entries in the records of a financial institution if he or she makes any false entry in any book, report, or statement of a financial institution with intent to injure or defraud such financial institution, or any other entity, or with intent to deceive any officer or director of a financial institution or any agent or examiner appointed to examine the affairs of such financial institution.

2. The offense of making false entries in the records of a financial institution is a class D felony.

(L. 1985 H.B. 408 § 570.200, A.L. 1991 H.B. 206, A.L. 2014 S.B. 491)

570.220. Check kiting - collected funds defined -penalty. - 1. A person commits the offense of check kiting if he or she, with intent to defraud, obtains money from a financial institution by drawing a check against an account in which there is not sufficient collected funds to pay the check and, he or she purports to cover that check by depositing in such account another check drawn against insufficient collected funds.

2. For purposes of this section, the term **"collected funds"** means that portion of a deposit account representing checks and other credits as to which the depositary has directly and affirmatively verified that final payment has been made or, in the alternative, with respect to checks as to which at least ten business days have elapsed, without return of the checks, since presentation for payment.

3. The offense of check kiting is a class E felony.

(L. 1985 H.B. 408 § 570.210, A.L. 2014 S.B. 491)

570.310. Mortgage fraud – penalty - venue. - 1. A person commits the offense of mortgage fraud if he or she, in connection with the application for or procurement of a loan secured by real estate, willfully:

(1) Employs a device, scheme, or artifice to defraud;

(2) Makes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Receives any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section; or

(4) Influences, through extortion or bribery, the development, reporting, result, or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee, or other person from asking the appraiser to do one or more of the following:

(a) Consider additional property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

2. The offense of mortgage fraud is a class D felony.

3. Each transaction in violation of this section shall constitute a separate offense.

4. Venue over any dispute relating to mortgage fraud or a conspiracy or endeavor to engage in or participate in a pattern of mortgage fraud shall be:

(1) In the county in which the real estate is located;

(2) In the county in which any act was performed in furtherance of mortgage fraud;

(3) In any county in which any person alleged to have violated this section had control or possession of any proceeds from mortgage fraud;

(4) In any county in which a related real estate closing occurred; or

(5) In any county in which any document related to a mortgage fraud is filed with the recorder of deeds.

5. The punishment imposed under this section shall be in addition to any punishment provided by law for the offense.

(L. 2008 H.B. 2188, A.L. 2014 S.B. 491)

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CHAPTER 574

OFFENSES AGAINST PUBLIC ORDER

574.105. Money laundering - penalty. - 1. As used in this section, the following terms mean:

(1) **"Conducts"**, initiating, concluding or participating in initiating or concluding a transaction;

(2) **"Criminal activity"**, any act or activity constituting an offense punishable as a felony pursuant to the laws of Missouri or the United States;

(3) **"Currency"**, currency and coin of the United States;

(4) **"Currency transaction"**, a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer or other written order, and which does not include the physical transfer of currency is not a currency transaction;

(5) **"Person"**, natural persons, partnerships, trusts, estates, associations, corporations and all entities cognizable as legal personalities.

2. A person commits the offense of money laundering if he or she:

(1) Conducts or attempts to conduct a currency transaction with the purpose to promote or aid the carrying on of criminal activity; or

(2) Conducts or attempts to conduct a currency transaction with the purpose to conceal or disguise in whole or in part the nature, location, source, ownership or control of the proceeds of criminal activity; or

(3) Conducts or attempts to conduct a currency transaction with the purpose to avoid currency transaction reporting requirements under federal law; or

(4) Conducts or attempts to conduct a currency transaction with the purpose to promote or aid the carrying on of criminal activity for the purpose of furthering or making a terrorist threat or act.

3. The offense of money laundering is a class B felony and in addition to penalties otherwise provided by law, a fine of not more than five hundred thousand dollars or twice the amount involved in the transaction, whichever is greater, may be assessed.

(L. 1992 S.B. 705 § 10, A.L. 2002 S.B. 712, A.L. 2014 S.B. 491)

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TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 3 - Retail Credit Sales

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 pain 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:

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

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.

TITLE 20 - DEPARTMENT OFCOMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 4 - Motor Vehicle Time Sales

20 CSR 1140-4.020 Recordkeeping

PURPOSE: The Division of Finance, Department of Economic Development has the authority to promulgate rules necessary to enforce the laws pertaining to motor vehicle time sales. The purpose of this rule is to establish minimum recordkeeping requirements to 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 sales finance company 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 expenses may be readily segregated.

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

(3) General Ledger. The general ledger shall be posted at least monthly. A trial balance sheet and a 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. Such ledger card or sheet shall set forth not less than the following items:

(A) Brief description of security pledged on contract, year model and whether new or used;

(B) Account number;

(C) Name and address of the buyer;

(D) Date of the contract;

(E) Date of first and subsequent payments;

(F) Number of installments;

(G) Amount of installments;

(H) Date payments received;

(I) The aggregate amount for all insurance, if a separate charge is made, on the motor vehicle against loss or damage of the motor vehicle, specifying the types of coverage and period;

(J) The aggregate amount for all insurance, if a separate charge is made, covering bodily injury and property damage to the person or property of others, specifying the types of coverage and period;

(K) The amount of charge for life insurance and accident and health 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;

(N) The time price differential;

(O) The total of principal and time price differential;

(P) The unpaid balance of the account; and

(Q) The date and amount of any additional interest collected on default or deferment.

(5) Index. The holder of a retail installment contract 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 and those paid in full.

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

(7) Records Available. All books, records and papers, including the contracts, applications, assignments, bills of sale, mortgages, motor vehicle titles, record of all insurance policies issued by or through the holder or seller as agent or broker in connection with the contract, shall be 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 a loan or credit, access must be provided for the examiner 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. In the event any contract is transferred to another office or company, the transfer or holder shall maintain in his files a copy of the original ledger card noting deposition of the contracts.

(8) Handling of Errors. When an error is made on the individua1 ledger or general ledger, a single thin line, preferably in red, shall be drawn through the improper entry and the correct entry made on the following line. No erasures whatsoever shall be made in any account of record.

(9) Preservation of Records. The holder of a retail installment contract 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 contract is paid in full it sha1l 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 contract 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 Paid in Full by Life Insurance. If a contract 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 365.060, RSMo 1986.* This rule originally filed as 4 CSR 140-4.020. Original rule filed Jan. 14, 1977, effective April 15, 1977. Moved to 20 CSR 11404.020, effective Aug. 28, 2006.

*Original authority: 365.060, RSMo 1963, amended 1993, 1995.

20 CSR 1140-4.030 Licensing

PURPOSE: The Division of Finance, Department of Economic Development has the authority to promulgate rules necessary to enforce the laws pertaining to motor vehicle time sales. The purpose of this rule is to establish guidelines for required licensing.

(1) Any location at which a sales finance company permits any person to accept or execute any forms or documents relating to motor vehicle time sales other than the place of business recited in the sales finance company registration certificate shall be deemed to be a place of business of the sales finance company and shall require a separate certificate of registration; provided, however, that no merchant dealing with motor vehicle time sales contracts issued to finance such merchant's own sales from inventory shall be considered to be doing business in behalf of said sales finance company.

AUTHORITY: section 365.060, RSMo 1986.* This rule originally filed as 4 CSR 140-4.030. Original rule filed Jan. 14, 1977, effective April 15, 1977. Moved to 20 CSR 11404.030, effective Aug. 28, 2006.

*Original authority: 365.060, RSMo 1963, amended 1993, 1995.

20 CSR 1140-4.040 Extension Fees

PURPOSE: This rule is designed to provide a simple extension fee formula which is equitable for both the financing institution and the dealer.

(1) Extensions on precomputed contracts made pursuant to the Motor Vehicle Time 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%.

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

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 365.060, RSMo 1986.* This rule originally filed as 4 CSR 140-4.040. Original rule filed Feb. 13, 1980, effective June 12, 1980. Moved to 20 CSR 1140-4.040, effective Aug. 28, 2006.

*Original authority: 365.060, RSMo 1963, amended 1993, 1995.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 5 - Small Loan Companies

20 CSR 1140-5.010 Audits

PURPOSE: Small loan companies are required to file an audit once a year with the Division of Finance. Unless this audit is filed, a company may not receive a renewal of its certificate of registration. This rule sets out the type of audit required and the time when it must be filed.

(1) No certificate of registration will be renewed unless a properly completed audit report is submitted to this division.

(2) A properly computed audit report shall meet the following requirements:

(A) It shall contain a balance sheet reflecting the registrant's financial condition; and

(B) It shall contain an opinion statement signed by a certified public accountant (C.P.A.) or authorized representative stating that s/he believes that, according to generally accepted accounting principles, the enclosed balance sheet fairly and accurately reflects the registrant's financial condition.

(3) The audit may only be prepared by a C.P.A. or a firm of which one (1) of the partners or employees is a C.P.A. The accountant, if an individual, shall have no financial interest in the registrant. If the accountant is a partnership or professional corporation, none of the partners nor any of the directors, officers or employees shall have a financial interest.

(4) The registrant shall submit an audit report reflecting its financial condition as of the end of the most recent fiscal year. However, if the registrant's most recent fiscal year ends within five (5) months of the statutory deadline for submitting the audit (May 31), the registrant may submit an audit report for the next most recent fiscal year.

(5) Since the requirements of this rule, specifically section (4), differ from the prior manner in which this division administered sections 367.205, 367.210 and 367.215, RSMo the following procedure shall be observed by registrants in applying for a renewal of a certificate of registration commencing with July 1, 1975 and ending with June 30, 1976:

(A) If the registrant has a fiscal year ending in the period commencing with July 1 and ending with December 31, it shall submit an audit report covering the fiscal year ending in 1974;

(B) If the registrant has a fiscal year ending in the period commencing with January 1 and ending with June 30, it need only submit an audit report for the fiscal year ending in 1974 and need not submit an audit report for the fiscal year ending in 1975; and

(C) If the registrant has already submitted an audit report for its fiscal year ending in 1974, it need not resubmit that report in order to obtain a renewal of its certificate of registration for the year commencing with July 1, 1975 and ending with June 30, 1976.

AUTHORITY: section 367.170, RSMo 1986.* This rule originally filed as 4 CSR 140-5.010. Original rule filed Sept. 19, 1975, effective Sept. 29, 1975. Moved to 20 CSR 1140-5.010, effective Aug. 28, 2006.

*Original authority: 367.170, RSMo 1951, amended 1984.

20 CSR 1140-5.020 Lending Activities

PURPOSE: Consumer credit lenders (small loan companies) are subject to examination by the Division of Finance for the purpose of determining these companies are complying with the provisions of Chapter 367, RSMo and the laws relating to consumer lending. In addition, these companies are subject to regulation by the Division of Finance with respect to their lending activities and the sale of insurance in connection with loans made. This rule sets out minimum recordkeeping requirements to facilitate examinations by the Division of Finance and establishes limitations upon the sale of insurance by small loan companies in connection with their lending activities.

(1) Each applicant, at the time of filing application, shall pay the sum of one hundred fifty dollars ($150) as an annual registration fee for the period July 1 through June 30 of the following year. The annual fee shall be paid on or before June 30 of each year. If the initial fee is for a period of less than twelve (12) months, the fee shall be prorated according to the number of months remaining in the period. The remittance covering registration fee shall be made payable to the director of revenue and mailed to the Division of Finance. Surety bond in the amount of one thousand dollars ($1000) shall accompany the initial application for certificate of registration and registration fee. The bond is to be coextensive with the registration year and must be furnished by a surety company authorized to do business in Missouri by the superintendent of insurance. Bond form will be furnished with the initial application for certificate of registration. No surety bond shall be required on renewal applications unless the commissioner shall otherwise determine and no surety bond shall be required in connection with the initial application if the applicant or, in the case of a corporation, any affiliate under the same general management has had a certificate of registration in effect for at least one (1) year unless the commissioner deems a bond necessary and requires that bond.

(2) No special system of records is required by the commissioner of finance. The records of a consumer credit lender 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.

(3) A cash book or cash journal shall contain a chronological record of the receipt and disbursement of all funds including refunds, title transfer fees, filing fees and all other items of receipt or expenditure incidental to the granting or collection of a loan and replevin, repossession or sale of collateral.

(4) The general ledger shall be posted at least monthly. A trial balance sheet and a profit and loss statement shall be prepared within thirty (30) days after the close of every monthly period. This trial balance or 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 lender, the general office shall provide information in line with this section.

(5) The individual ledger, preferably individual account card, shall be kept for each individual loan. The ledger card or sheet shall set forth not less than the following items: kind of security pledged for loan; account number; name and address of the borrower; names of comakers and endorsers; number of installments; dates of first and subsequent payments; date of loan; principal amount of loan; renewal notes (old account so stamped shows also number of current loan); date payments received; amount paid on interest when interest is not added to principal; amount paid on principal when face of note does not include interest; amount of payment including interest and principal; unpaid balance of principal or principal and interest combined; date interest paid to, if this date differs from date of payment, if interest is not included in face of note; if interest is added on, show this amount in a separate figure; amount of any additional interest collected on default or extension, if interest according to original contract is included in face of note; and direct loan ledger cards and sales finance ledger cards shall be filed separately.

(6) The lender shall maintain a file which shall index alphabetically each maker, comaker and endorser on each loan and shall recite each loan in respect to which party is a maker, comaker or endorser and make available the following information: name and address of borrower, and name of husband or wife, if married; names and addresses of comakers or endorsers; date of loan; amount of loan; number of loan; and date loan paid in full. The current record shall be filed separately from those paid in full.

(7) Each loan or loan contract shall bear a number which corresponds to the account

number. Using this procedure it will not be necessary to provide a loan register.

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

(9) 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 made on the following line. No erasures shall be made in any account of record.

(10) A consumer credit lender shall keep all records on loans available for examination for a period of two (2) years from the date of final payment.

(11) Extensions on precomputed loans made pursuant to the Small Loan 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 × 1.5825 or $34.81. Considerations within the Act necessitate the following limitations on extensions:

(A) No extension may be taken on the first installment;

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

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

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

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

(F) 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 interest contracted for, plus the extension fees collected.

(12) If a lender customarily by arrangement or otherwise permits its loan forms, including applications, notes, mortgages, financial statement, etc., to be in the hands of any person, firm or corporation at a place of business other than the place of business recited in the registration certificate for the purpose of having these applications, notes, mortgages or other documents executed by others at that place, whether or not this person, firm or corporation be an employee or agent of the lender, or purports to be an agent of prospective borrowers or a broker, the place where these loan papers are located shall be deemed to be a place of business of the lender and shall require a separate certificate of registration.

(13) Whenever a loan is secured by a lien on a motor vehicle, it shall be the responsibility of the lender to see that the title to the motor vehicle is in the name of the borrower executing the mortgage on this motor vehicle.

(14) No note or loan contract shall be accelerated as to payment unless it shall be duly signed by the borrower and shall contain a provision that, upon default in payment of the note or loan contract or any part, or upon default of a condition contained in this note or loan contract, it may be so accelerated. Whenever the lender shall accelerate the balance due on a note or loan contract which provides for an amount of interest added to the principal amount, the unpaid balance shall be reduced by the refund of that portion of the

amount of interest originally contracted for and added to the principal which would be required by section 408.170, RSMo as if prepayment in full occurred on the date of acceleration and the lender may charge interest at the rate originally contracted for computed on unpaid balances for the time actually outstanding from the installment date following the date of acceleration until paid.

(15) Comprehensive and collision insurance with a deductible clause of not less than fifty dollars ($50) may be sold, requisitioned, required or accepted in connection with any consumer credit loan secured by a lien on any motor vehicle in an amount that does not exceed the average retail value of the motor vehicle in accordance with any of the standard automobile manuals. Motor vehicle insurance is limited to the motor vehicle owned by the borrower and shall not cover motor vehicles of comakers, endorsers, guarantors or others. Provided, that on consumer credit loans of three hundred dollars ($300) or less secured by a lien on a motor vehicle, no insurance may be sold, requisitioned or required.

(16) Decreasing term life insurance may be sold, requisitioned, required or accepted by any lender in connection with any consumer credit loan. The original amount of this insurance shall not exceed the face amount of the note evidencing this loan.

(17) Credit property insurance may be sold, requisitioned, required or accepted in connection with any consumer credit loan; provided, that the 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; this insurance must calculate benefits from the state of loss;

(B) Written Evidence of Coverage. The borrower 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. Whenever credit property insurance is sold by a creditor, the creditor must retain a list of the personal property securing the loan which list must be signed by the borrower and dated to correspond with the loan;

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

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

2. The borrower may substitute coverage at any time and, upon substitution, shall be entitled to a pro rata refund of the unearned premium; where insurance was not initially required by the creditor, the borrower 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 cancellation, the borrower shall be entitled to a pro rata refund of the unearned premium;

(E) Notice of Borrower's Rights. Lenders must provide borrowers with a summary of their rights concerning credit property insurance, a signed, dated notice of the following or substantially similar language will evidence compliance with this requirement:

"I understand that I am free to insure my furniture with whatever licensed company, agent or broker I may choose; that I may do so at any time after the date of this loan; that I have not cancelled existing insurance on my furniture if I owned it before this loan; and that this loan cannot be denied me simply because I did not purchase my insurance through the lender."

…… ……
Date Signature of Insured

(F) 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;

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

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

(18) No insurance shall be sold in connection with consumer credit loans except in

companies duly authorized to do business in this state.

(19) No insurance may be sold in connection with consumer credit loans which contain special policy provisions covering conversion, embezzlement or similar protections against the borrower's dishonesty.

(20) Health and accident insurance may be sold, requisitioned or accepted by any lender in connection with any consumer credit loan. A certificate of policy must be issued to borrower. Insurance shall be obtained from an insurance company duly authorized to conduct business in this state. Accident and health insurance may be in the form prescribed in section 385.070(2), RSMo or in the form known as dismemberment insurance; under no circumstances may both types of accident and health insurance be sold in connection with the same consumer credit loan. If credit dismemberment insurance is sold, requisitioned or accepted in connection with a consumer credit loan, this insurance shall be subject to the following requirements, restrictions and qualifications:

(A) Persons Insured. Credit dismemberment insurance may be written on no more than one (1) person on any contract;

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

(C) Insurance must be available as coverage by itself and not merely as a supplement to other insurance;

(D) Cancellation. Credit dismemberment insurance shall be subject to the refunding provisions as though it were credit life insurance issued pursuant to Chapter 385, RSMo and corresponding regulations;

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

(F) Minimum Standards. Credit dismemberment insurance must provide for a total payoff of an underlying indebtedness in the event of loss of the sight of one (1) eye, loss of one (1) hand at or above the wrist, or loss of one (1) foot at or above the ankle or both, no restrictions shall be permitted, that is, full benefits must be payable on any dismemberment or blindness which occurs during the coverage; and

(G) Recordkeeping. Claims which are made through the dismemberment insurance shall be maintained in the same manner as a death claim.

(21) The charge for any insurance sold shall not be greater than the standard or usual rate charged for comparable insurance by insurance companies or agents for similar insurance that is sold other than in connection with consumer credit loans.

(22) The lender shall deliver to the borrower at the time the loan is made or within a reasonable time, in all cases where insurance is sold or requisitioned by the lender and paid for by the borrower, a copy of the insurance policy or a certificate of insurance which shall set out the effective date, date of expiration, type and amount of coverage and amount of premium.

(23) When a loan secured by insurance is renewed or refinanced, the insurance policy or certificate shall be cancelled before any new insurance is written. When this cancellation is made, the insured shall receive a refund of a portion of the premium paid as follows: If the policy is decreasing term life insurance or health and accident insurance, the amount of the refund shall be computed under the Rule of Seventy Eight's (78's) refund method, which is the method specified in section 408.170, RSMo for refund of interest. If the policy is level term insurance or personal property insurance, the amount of the refund shall be that portion of the insurance premium paid which the number of full unexpired months of the policy after the date of renewal or refinancing bears to the total number of full months for which the premium was paid. Where the amount of the refund is less than one dollar ($1), no refund need be made. Not more than one (1) policy of life and one (1) policy of health and accident may be in force at any one (1) time.

(24) Whenever any loan is prepaid in full, the lender shall release all claims to any insurance policy sold, requisitioned, required or accepted in connection with any consumer credit loan and the lender shall return any policy held by it to the borrower.

(25) Every lender shall disclose in the annual report the income received by it from insurance sold in connection with consumer credit loans, together with the expense incurred in connection with this insurance and other relevant information as the commissioner finance may prescribe.

(26) Every lender shall keep a record of each insurance transaction, available for

inspection by the commissioner of finance, his/her deputies and examiners.

(27) If an issuing company shall cancel the original motor vehicle policy, the responsibility for securing new insurance of similar coverage rests upon the lender and, in the absence of this insurance, full refund of unearned premium shall be paid to the borrower in cash or credit to the borrower's loan account. In no case may a lender foreclose the account or seize the mortgaged chattel by reason of failure to furnish insurance under thirty (30) days' written notice, delivered to the borrower in person or by registered mail. This notice shall require the borrower to provide similar insurance coverage within ten (10) days as provided in the mortgage clause with the policy or to pay off his/her loan or loan contract without penalty of costs of suit, attorney's fees or otherwise.

(28) The lender shall not require, as a condition of making any loan or the renewal or extension of the loan, that the borrower shall negotiate through a particular insurance company or insurance agent or broker any policy of insurance or renewal of insurance.

(29) The lender shall display in a conspicuous place the following: "Credit insurance is available to borrowers. No new loan, renewal or extension thereof is conditioned upon purchase of such insurance from the lender or any particular insurer or agent."

AUTHORITY: section 367.170, RSMo 1986.* This rule originally filed as 4 CSR 140-5.020. Original rule filed Oct. 2, 1951, effective Oct. 12, 1951. Amended: Filed Feb. 23, 1952, effective March 5, 1952. Amended: Filed Feb. 26, 1952, effective March 8, 1952. Amended: Filed July 17, 1953, effective July 27, 1953. Amended: Filed May 21, 1954, effective May 31, 1954. Amended: Filed July 1, 1957, effective July 11, 1957. Amended: Filed Aug. 6, 1957, effective Aug. 16, 1957. Amended: Filed Jan. 6, 1958, effective Jan. 16, 1958. Amended: Filed Aug. 31, 1959, effective Sept. 10, 1959. Amended: Filed Sept. 25, 1961, effective Oct. 5, 1961. Amended: Filed Aug. 11, 1965, effective Aug. 21, 1965. Amended: Filed March 11, 1966, effective March 21, 1966. Amended: Filed Aug. 12, 1967, effective Aug. 22, 1967. Amended: Filed April 8, 1968, effective April 18, 1968. Amended: Filed April 13, 1978, effective Aug. 11, 1978. Amended: Filed June 14, 1978, effective Sept. 11, 1978. Amended: Filed April 12, 1979, effective July 12, 1979. Amended: Filed Feb. 13, 1980, effective June 12, 1980. Amended: Filed July 15, 1981, effective Oct. 15, 1981. Moved to 20 CSR 1140-5.020, effective Aug. 28, 2006.

*Original authority: 367.170, RSMo 1951, amended 1984.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 11 - Small, Small Loan Companies

20 CSR 1140-11.030 Licensing and General Provisions

PURPOSE: Section 500 companies are required by section 408.500.1 to 408.506, RSMo, to obtain a license from the director of finance. This rule establishes guidelines concerning licenses, which locations will require a license and other general provisions.

(1) License. The license issued by the Division of Finance shall specify the location of the section 500 company and shall be prominently displayed therein. The license shall not be transferable or assignable except that the company named in any original license may obtain a change of address without charge, upon approval of the director.

(2) Display of Notice. The notice required by section 408.500.4, RSMo shall be prominently displayed in the section 500 company office. The notice shall be clearly readable from any place in the office where loans are closed and shall include the name, address, and telephone number of the Division of Finance.

(3) Locations. The conduct of other business on the premises will not bar the issuance of a section 500 company license but the records of the company must be kept strictly separate from those of any other enterprise. Further, there should be enough of a distinction, through the use of signage or other means, that the customer can determine that s/he is dealing with a separate company. Under no circumstances will more than one (1) section 500 company license be issued to the same address.

(4) Additional Locations. Any location at which a section 500 company permits the acceptance or execution of any forms or documents relating to section 500 company business shall be deemed to be a place of business of the company and shall require a separate license.

(5) Contract Copies. A section 500 company shall provide the borrower with a copy of the signed contract at the time the loan is made and at each renewal. The company shall also retain a copy for the borrower's file. Each

contract shall contain the name and address of the lender and of the borrower.

(6) Interest-Loan Origination Fee-When Earned. Section 408.500.5, RSMo provides that a loan repaid by the close of the section 500 company's next full business day shall be at no cost to the borrower. Section 500 loans which are not so repaid shall bear daily interest to be determined by applying the contract rate of interest to the principal balance and dividing that result by the number of days in the year. The loan origination fee, if permitted by section 408.140.1(1), RSMo is earned at the time the loan is made, unless the borrower returns the full principal balance by the end of the section 500 company's next full business day. The fee is only available on loans with terms of thirty (30) days or longer.

(7) Post-Dated Check. A post-dated check shall not be considered security or collateral; provided, however, that no post-dated check may bear any date earlier than the due date of the loan. A section 500 company shall not accept undated checks, checks that have been altered in any manner, or checks that do not bear the signature of the borrower. Should any such check be accepted, or should any post-dated check be deposited prior to its stated date, the section 500 company shall be barred from recovery of any interest or fees on the loan. A section 500 company shall not accept more than one (1) post-dated check per loan or renewal. A check left with a section 500 company shall be returned to the maker immediately upon payment, or renewal, of the loan.

(8) Renewals. The General Assembly has clearly indicated its intention that no borrower is to be indebted to a section 500 company on any particular loan for any great period of time. This is evidenced by language that a) requires the borrower to begin reducing the principal amount of the loan by not less than five percent (5%) with the first renewal, b) limits the number of renewals to six (6), and c) provides for seventy-five percent (75%) of the original loan amount as the maximum amount of interest and fees that a lender may collect. In determining whether a renewal or something else which does not count as a renewal has occurred, the Division of Finance will insist upon absolute good faith from its licensees and will look to substance rather than form. Generally, if the customer enters the office indebted and leaves the office indebted, a renewal will be assumed to have taken place unless the loan was paid in full in cash. A section 500 company is required by section 408.500.7, RSMo to consider, at the inception of the loan, the borrower's ability to repay. This requires the section 500 company to consider the borrower's ability to make the required principal reductions when necessary. Exceptions to this requirement may result in enforcement as provided in sections 408.500.9 and 408.500.10, RSMo, which may include fines and/or revocation or suspension of the license. If a loan is renewed without the required principal reduction, the section 500 company shall reduce the principal of the loan to an amount that is consistent with the requirements of section 408.500.6, RSMo.

(9) Collection by Automated Clearing House (ACH). Checks may be presented for collection using an automated clearing house; however, a section 500 company shall not use a series of ACH transactions to collect a single check. Fees for dishonored ACH transactions shall be limited to those for refused instruments.

(10) Receipt for Payments. A receipt shall be given for the amount of each payment made in currency.

(11) Penalties. Violations of this rule shall be regarded as violations of sections 408.500.1 to 408.506, RSMo and subject to the same penalties as provided in sections 408.500.9 and 408.500.10, RSMo.

AUTHORITY: sections 361.105, RSMo 2000 and 408.500, RSMo Supp. 2002.* This rule originally filed as 4 CSR 140-11.030. Original rule filed Jan. 16, 2003, effective Aug. 30, 2003. Moved to 20 CSR 1140-11.030, effective Aug. 28, 2006.

*Original authority: 361.105, RSMo 1967, amended 1993, 1994, 1995 and 408.500, RSMo 2002.

20 CSR 1140-11.040 Record Keeping

PURPOSE: Section 500 companies are subject to regulation and examination by the Division of Finance, pursuant to sections 408.500.1 to 408.506, RSMo, for the purpose of assuring compliance with all applicable laws. This rule establishes minimum record keeping requirements to facilitate examination and regulation.

(1) Books and Records. No special system of records is required by the director of finance. The records of a section 500 company 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 expenses may be readily ascertained.

(2) Cash Journal. A cash book or cash journal shall contain a chronological record of the receipt and disbursement of all funds including all items of receipt or expenditures incidental to the granting or collection of section 500 company loans. Entries in the cash journal shall be separate from all other business activities.

(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. When 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. An individual record shall be kept for each borrower which shall include at least the following items:

(A) Name of the borrower;

(B) Date the original loan was made;

(C) Original loan amount;

(D) Interest rate;

(E) Dates payments were received;

(F) Amount of each payment received;

(G) Amount of each payment applied to interest;

(H) Amount of each payment applied to principal;

(I) Amount applied to late charges, if any;

(J) Amount applied to returned check charges, if any;

(K) Principal balance; and

(L) Renewal number.

(5) Records Available. All books, records and papers, including the contracts and applications, shall be kept in the office of the section 500 company and made available to the Division of Finance for examination at any time without previous notice. When contracts are hypothecated or deposited with a financial institution or other party in connection with credit, access must be provided for the examiner pursuant to agreement between the section 500 company and the other financial institution(s).

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

(7) Records to be Maintained. A section 500 company shall preserve all records of company transactions, including cards used in a card system, if any, for at least two (2) years after making the final entry with respect to any section 500 company agreement. Preservation of records may be by microfilm, microfiche or electronic means.

(8) Contracts Paid in Full. When a section 500 note is paid in full, the original contract or a copy thereof shall be marked "paid" and returned to the borrower.

(9) Penalties. Violations of this rule shall be regarded as violations of sections 408.500.1 to 408.506, RSMo and subject to the same penalties as provided in sections 408.500.9 and 408.500.10, RSMo.

AUTHORITY: sections 361.105, RSMo 2000 and 408.500, RSMo Supp. 2002.* This rule originally filed as 4 CSR 140-11.040. Original rule filed Jan. 16, 2003, effective Aug. 30, 2003. Moved to 20 CSR 1140-11.040, effective Aug. 28, 2006.

*Original authority: 361.105, RSMo 1967, amended 1993, 1994, 1995 and 408.500, RSMo 2002.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 12 - Sale of Checks (Money Order) Licensees

20 CSR 1140-12.010 Sale of Checks (Money Order) Bonds

PURPOSE: All licensees, pursuant to the Missouri sale of checks law (sections 361.700–361.727, RSMo), must post a bond or an irrevocable letter of credit to insure faithful performance and that all checks (that is, money orders and travelers checks) will be paid. This rule sets the minimum acceptable standards for those bonds or irrevocable letters of credit.

No sale of checks license will be issued or renewed without the posting of a corporate surety bond or irrevocable letter of credit in the amount of one (1) million dollars; provided, however, that a lesser bond or letter of credit in an amount equal to five (5) times the high outstanding balance of checks sold in Missouri by the applicant and its agents during the previous calendar year rounded to the nearest one thousand dollars ($1,000) will be

acceptable upon a verification of the high outstanding balance and provided further that in no event may the bond or letter of credit be less than twenty-five thousand dollars ($25,000). Verification shall be a sworn statement, on a form provided by the director, of the high outstanding balance; documents and records to prove such sworn statement must be maintained at the principal office of the licensee and be available for examination by the Division of Finance at all reasonable times and failure to maintain such records will subject the licensee to revocation per sections 361.700–361.727, RSMo. Money order accounts must be dedicated and no funds commingled with other funds of the agent. For purposes of this rule, the high outstanding balance of checks shall mean the highest dollar amount of checks sold but not yet paid on any day. The bond or irrevocable letter of credit shall be in a form satisfactory to the director and, if a bond, shall be issued by a bonding company or insurance company authorized to do business in Missouri or, if an irrevocable letter of credit, be issued by a federally insured financial institution, to secure the faithful performance of the obligations of the applicant and the receipt, transmission and payment of the money in connection with the sale or issuance of checks. At the time an application is forwarded to an initial applicant and at the renewal of any existing license, the applicant/renewal applicant must provide an affidavit declaring the high outstanding balance of checks sold within Missouri during the previous calendar year and must provide a bond or irrevocable letter of credit sufficient to cover all those liabilities within the limits stated here. In consideration of the tasks necessary to complete the process, compliance with the verification procedures for the licensing year which began April 15, 1995, will be considered timely if completed by July 17, 1995.

AUTHORITY: section 361.727, RSMo 2000.* This rule originally filed as 4 CSR 140-12.010. Original rule filed Dec. 11, 1990, effective April 29, 1991. Emergency amendment filed March 27, 1995, effective April 14, 1995, terminated May 1, 1995. Emergency amendment filed May 1, 1995, effective May 11, 1995, expired Sept. 11, 1995. Amended: Filed March 27, 1995, effective Sept. 30, 1995. Amended: Filed Feb. 15, 2002, effective Aug. 30, 2002. Moved to 20 CSR 1140-12.010, effective Aug. 28, 2006.

*Original authority: 361.727, RSMo 1984, amended 1993.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 13 - Section 408.510 Companies

20 CSR 1140-13.010 Licensing Requirements and General Provisions

PURPOSE: Section 408.510 companies (consumer installment lenders) are required by section 408.510, RSMo, to obtain a license from the director of finance. In addition, consumer installment lenders are subject to examination by the Division of Finance for the purpose of determining that these companies are complying with the provisions of Chapter 367 and section 408.510, RSMo, and the laws relating to consumer installment lending. This rule sets out minimum record keeping requirements to facilitate examinations by the Division of Finance, which locations will require a license and other general provisions.

(1) Applicability of Other Regulations. Section 408.510 licensees are a special category of sections 367.100–367.215 lenders and, accordingly, are subject to the regulations generally applicable to licensees under those sections, i.e., 4 CSR 140-5.010 and 4 CSR 140-5.020 which, in the interest of brevity, are not restated here.

(2) Contract Copies. A consumer installment lender shall provide the borrower with a copy of the signed contract at the time the loan is made and at each renewal. The company shall also retain a copy for the borrower's file. Each contract shall contain the name and address of the lender and of the borrower.

(3) Amount of Loan. Consumer installment lenders are permitted to make loans of any amount, whether or not secured, and all loans made by such lenders must be payable in no fewer than four (4) substantially equal installments which must run for a minimum of one hundred twenty (120) days.

(4) Interest - Loan Origination Fee - When Earned. Consumer installment loans shall bear daily interest to be determined by applying the contract rate of interest to the principal balance and dividing that result by the number of days in the year. Loans may not have an amount of interest added to the principal of the loan or be subject to the "Rule of 78s" or "Sum of the Digits" method of refunding. The loan origination fee is earned at the time the loan is made.

(5) Fees. A consumer installment lender shall not charge, contract for or receive, either

directly or indirectly, any fee not expressly permitted by section 408.140.1, RSMo.

(6) Contracts Paid in Full. When a consumer installment note is paid in full, the original contract or a copy thereof, shall be marked "paid" and returned to the borrower. Any security interest that no longer secures a loan shall be restored, cancelled, or released.

AUTHORITY: section 408.510, RSMo Supp.2001.* This rule originally filed as 4 CSR140-13.010. Original rule filed Feb. 15, 2002, effective Aug. 30, 2002. Moved to 20 CSR 1140-13.010, effective Aug. 28, 2006.

*Original authority: 408.510, RSMo 2001.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 29 - Title Loan Companies

20 CSR 1140-29.010 Licensing, Record Keeping and General Provisions

PURPOSE: Title loan companies (title lenders) are subject to examination by the Division of Finance for the purpose of determining that these companies are complying with the provisions of sections 367.500 to 367.533, RSMo, and the laws relating to title lending. This rule establishes minimum record keeping requirements to facilitate examination and regulation and other general provisions.

(1) Display of Notice. The notice required by section 367.525.3, RSMo shall be prominently displayed at a place in the title lending office. The notice shall be clearly readable from any place in the title lending office where loans are closed and shall include the name, address, and telephone number of the Division of Finance.

(2) Locations. The conduct of other business on the premises will not bar the issuance of a title loan license, but the records of the title lender must be kept strictly separate from those of any other enterprise. Further, there should be enough of a distinction, through the use of signage or other means, that the customer can determine that s/he is dealing with a separate company. Under no circumstances will more than one (1) title loan license be issued to the same address.

(3) Contract Copies. A title lender shall provide the borrower with a copy of the signed title loan agreement at the time the loan is made and at each renewal. The title lender shall also retain a copy for the borrower's file.

(4) Interest-Loan Origination Fee-When Earned. Section 367.518.1(5), RSMo provides that a loan repaid by the close of the title lender's next full business day shall be at no cost to the borrower. Title loans which are not so repaid shall bear daily interest to be determined by applying the contract rate of interest to the principal balance and dividing that result by the number of days in the year. The loan origination fee permitted by 408.140.1(1), RSMo is earned in full at the close of the lender's next full business day.

(5) Fees. A title lender shall not charge, contract for or receive, either directly or indirectly, fees not expressly permitted by section 408.140.1, RSMo.

(6) Jointly Owned Titled Personal Property. Whenever a certificate of title evidences more than one (1) owner of the titled personal property being used to secure a title loan agreement or renewal, the title lender shall obtain signatures authorizing the pledge of the titled personal property from each owner, whether or not obligated on the title loan agreement or renewal.

(7) Renewals.

(A) The General Assembly has clearly indicated that no borrower is to be indebted to a title lender for any great period of time. This is evidenced by use of language that prohibits the debt being renewed by payment of interest no more than two (2) times after which the minimum payment must be the interest due plus at least ten percent (10%) of the original principal. This would, of course, accomplish a payoff at a specific time. In determining whether a renewal or something else which does not count as a renewal has occurred, the Division of Finance will insist upon absolute good faith from its licensees and will look to substance rather than form. Generally, if the customer enters the office indebted and leaves the office indebted, a renewal will be assumed to have taken place. A new loan, rather than a renewal, will be recognized where the customer's debt ceases to exist for at least the interval from the end of the business day the loan was paid in full to the beginning of the next business day.

(B) A title lender is required by section 367.525.4, RSMo to consider at the inception of the loan the borrower's ability to repay. This requires the title lender to consider the borrower's ability to make the required principal reductions when necessary. Exceptions to this requirement may result in enforcement as provided in section 367.532, RSMo which may

include fines and/or revocation or suspension of the license.

(C) If a loan is renewed for a third or subsequent time without the required principal reduction, the title lender shall reduce the principal of the loan to an amount that is consistent with the requirements of section 367.512.1(4), RSMo.

(D) It is recognized that on rare occasions a borrower may be unable to pay the entire amount necessary to renew a loan. In this event, a title lender may 1) demand payment in full, 2) do nothing, 3) waive a portion of the interest due in order for the loan to be renewed, or 4) on a very limited basis, accept the payment of accrued interest without renewing the loan. The acceptance of accrued interest-only payments by a title lender is forbidden, by section 367.512.1(4), RSMo to become a pattern or practice.

(8) Books and Records. No special system of records is required by the commissioner of finance. The records of a title lender 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 expenses may be readily ascertained.

(9) Cash Journal. A cash book or cash journal shall contain a chronological record of the receipt and disbursement of all funds including title transfer fees, filing fees and all other items or receipts or expenditures incidental to the granting or collection of a loan and replevin, repossession or sale of collateral.

(10) 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. When 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.

(11) Account Ledger. An individual record shall be kept for each borrower. The ledger card or sheet shall include at least the following items:

(A) Account number;

(B) Name and address of the borrower;

(C) Description of the titled personal property;

(D) Date the original loan was made;

(E) The original loan amount;

(F) The amount of any fees assessed;

(G) The interest rate;

(H) Number of payments;

(I) Amount of payments;

(J) Date payments received;

(K) Amount of each payment received;

(L) Amount of each payment applied to interest;

(M) Amount of each payment, if any, applied to late charges;

(N) Amount of each payment, if any, applied to returned check charges;

(O) Amount of each payment, if any, applied to principal; and

(P) The principal balance.

(12) Records Available. All books, records and papers, including the contracts and applications, shall be kept in the office of the title lender and made available to the Division of Finance for examination at any time without previous notice. When contracts are hypothecated or deposited with a financial institution or other party in connection with credit, access must be provided for the examiner pursuant to agreement between the title lender and the other financial institution(s).

(13) Handling of Errors. When an error is made on the individual ledger or general ledger of a manual operation, a single thin line, preferably in red, shall be drawn though the improper entry and the correct entry made on the following line. No erasures whatsoever shall be made in any record.

(14) Contracts Paid in Full. When a title loan is paid in full, the original note or a copy thereof, shall be marked “paid” and returned to the borrower. Any security interest that no longer secures a loan shall be restored, canceled or released.

(15) Receipt for Payments. A receipt shall be given for the amount of each payment made in currency.

AUTHORITY: section 367.503.4, RSMo Supp. 2001.* This rule originally filed as 4 CSR 140-29.010. Original rule filed Feb. 15, 2002, effective Aug. 30, 2002. Moved to 20 CSR 1140-29.010, effective Aug. 28, 2006.

*Original authority: 367.503.4, RSMo 1998, amended 2001.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140- Division of Finance
Chapter 30 - Mortgage Broker and Originator Rules

20 CSR 1140-30.200 Definitions

PURPOSE: This rule establishes the definitions used in 20 CSR 1140-30 and 20 CSR 1140-31.

(1) The definitions in sections 443.701 to 443.893, RSMo, shall apply to these rules. In addition, the terms listed below shall have the following meanings:

(A) "Act," the Missouri Secure and Fair Enforcement for Mortgage Licensing and Residential Mortgage Brokers Licensing Act;

(B) "Broker" shall have the same meaning as Residential Mortgage Loan Broker set forth in section 443.703.1(31), RSMo;

(C) "Control" means the power to, directly or indirectly, affect the voting interest of twenty-five percent (25%) or more of any class of the outstanding voting shares, or partnership interest or limited liability company interest, of a broker; and

(D) "First tier subsidiary" shall include any corporation or limited liability company which is majority owned and controlled by a federally-insured and regulated depository institution.

AUTHORITY: sections 443.703.2, 443.709, 443.711, 443.725, 443.843, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.703, RSMo 2009; 443.709, RSMo 2009; 443.711, RSMo 2009; 443.725, RSMo 2009; 443.843, RSMo 1994, amended 1995, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.210 Licensing of Mortgage Loan Originators

PURPOSE: This rule establishes guidelines for the licensing of mortgage loan originators.

(1) Initial Licensing. Application for an initial Mortgage Loan Originator license shall be made within the procedures established by the Nationwide Mortgage Licensing System and Registry (NMLSR).

(2) Incomplete Applications. Failure to meet a request for additional information within ten (10) business days may result in denial of the application. A denial under such circumstances shall not affect subsequent applications filed with the appropriate fee.

(3) License Renewal and Expiration. Application for renewal shall be made within the procedures established by NMLSR. A renewal application not received by the division prior to December 1 of any year cannot be assured of issuance prior to January 1, at which time the license will be considered to be expired. Any license which is not renewed prior to December 31 may require the applicant to file a reinstatement application as provided for in these rules.

(A) The director may not renew a Mortgage Loan Originator license unless all required fees, administrative penalties owed to the director, and any refunds ordered by the director to be returned to consumers have been paid.

(4) Reinstatement of License. The license of a mortgage loan originator that expires for failure to satisfy the minimum standards for renewal or does not allow for sufficient lead time for review and processing of an application may be reinstated if the licensee meets the following requirements:

(A) The licensee must submit a request for reinstatement through the NMLSR;

(B) All continuing education courses and any other requirements for the license renewal for the year in which the license expired must be completed; and

(C) The licensee must pay the applicable licensing, reinstatement, and late fees/penalties.

1. If the mortgage loan originator whose license has expired fails to meet the requirements for reinstatement specified in this section and submits a reinstatement filing within the parameters established by NMSLR, the mortgage loan originator must apply for a new license and meet the requirements for licensure in effect at that time.

2. The director may waive any late filing penalty or fee for a licensed mortgage loan originator on active military duty serving outside of Missouri.

(5) Fees.

(A) Initial and renewal applications shall be made through the NMLSR and shall be accompanied by the applicable fee, which shall be set by the director from time-to-time, not to exceed two hundred fifty dollars ($250). Said fees are not refundable.

(B) For each duplicate original license issued, the director shall collect a duplicate original license fee not to exceed one hundred fifty dollars ($150).

(C) For each amended license issued, the director shall collect an amended original license fee not to exceed one hundred fifty dollars ($150).

(D) A late fee, not to exceed one hundred fifty dollars ($150), may be assessed to any mortgage loan originator who fails to submit a renewal application by December 31 of each year.

AUTHORITY: sections 443.709, 443.711, 443.725, 443.843, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.709, RSMo 2009; 443.711, RSMo 2009; 443.725, RSMo 2009; 443.843, RSMo 1994, amended 1995, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.220 Self-Reporting Requirements

PURPOSE: This rule establishes self-reporting requirements for mortgage loan originators, brokers, or any of a broker's directors, principal stockholders, members, partners, or individuals who influence management.

(1) A mortgage loan originator, broker, or any of a broker's directors, principal stockholders, members, partners, or individuals who influence management (hereinafter collectively referred to as "licensee" for the purpose of this rule) shall notify the director in writing within five (5) days of the occurrence of any of the following events:

(A) Licensee files for bankruptcy protection or is subjected to an involuntary bankruptcy proceeding;

(B) Institution by any state or other jurisdiction of a license denial, cease and desist, suspension or revocation procedure, or other formal or informal regulatory action against a licensee;

(C) Institution of an action by the Missouri attorney general or other enforcer of the consumer protection laws of any jurisdiction to enforce consumer protection laws against a licensee;

(D) Having a license suspended, terminated, or otherwise prohibited from participating in a federal or state program;

(E) Licensee is suspended, terminated, or otherwise prohibited as an approved lender or seller/servicer by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Department of Housing and Urban Development, Department of Veterans Affairs, or any other federal or state agency or program;

(F) The entry of a judgment against a licensee;

(G) A licensee is convicted of or enters a plea of guilty or nolo contendere to a felony or misdemeanor, excluding traffic violations, in a domestic, foreign, or military court. For the purposes of this requirement, a licensee need not report traffic or driving violations to the director so long as said violations are not felonies;

(H) The entry of a tax or other government lien upon the property of a licensee; or

(I) Revocation or suspension of a licensee's professional or business license by any state or jurisdiction. An agreement to surrender a license and/or not to operate in an occupation in which a professional license is required shall be considered a revocation for the purposes of this rule.

AUTHORITY: sections 443.869 and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.869, RSMo 1994, amended 1995, 2001, 2009 and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.230 Challenges to Information Submitted to NMLSR

PURPOSE: This rule establishes the procedures by which a mortgage loan originator can challenge information submitted by the director to the Nationwide Mortgage Licensing System and Registry.

(1) A mortgage loan originator may challenge the accuracy of information entered by the director to the Nationwide Mortgage Licensing System and Registry (NMLSR) regarding the mortgage loan originator by filing a written appeal with the director. The appeal shall specify what information is alleged to be in error and the basis of said belief. The appeal shall also include any documentation believed to support the mortgage loan originator's claim. The director shall review the appeal and notify the mortgage loan originator of the director's decision within thirty (30) days of receipt of the appeal, which shall represent the director's final decision.

AUTHORITY: sections 443.727, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.727, RSMo 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.240 Operations and Supervision of Residential Mortgage Loan Brokers

PURPOSE: This rule establishes procedures and guidelines for the licensing of residential mortgage loan brokers and the fees associated therewith.

(1) Creation of a company/business account/record through the Nationwide Mortgage Licensing System and Registry (NMLSR).

(A) Prior to initial licensure or renewal, each applicant for a broker's license shall create a company/business account/record or otherwise register through the NMLSR or its successor(s), in order to obtain a unique or other identifier assigned by protocols established by the NMLSR. Applicants shall continue to satisfy the requirements set forth by the NMLSR in order to keep its company/business account/record in current or active status, including but not limited to the payment of any applicable fees.

(B) Applicants for initial licensure or renewal shall apply through the NMLSR on forms acceptable to the director and shall be verified by the oath or affirmation of the applicant or a principal officer thereof. In addition to the documents and information required by law or rule, the director may require additional information in order to enable the director to determine that the applicant meets or the licensee continues to meet the requirements of the Missouri Secure and Fair Enforcement for Mortgage Licensing and Residential Mortgage Brokers Licensing Act. Where the NMLSR does not make available submission of any document or report required or permitted by law to be filed with the director, an applicant shall directly submit such information to the director in the format requested.

(C) Notwithstanding a licensee's biennial renewal anniversary date, each licensee shall annually attest to the completeness, truthfulness, and accuracy of its company/business account/record during the annual year-end renewal period established by the NMLSR. Failure to do so shall result in the suspension of the broker's license.

(2) Initial Licensing. Applications for an initial broker's license shall be in a form prescribed by the director and shall include a nonrefundable license investigation fee which shall be set by the director from time-to-time, not to exceed one thousand five hundred dollars ($1,500).

(A) Failure to meet a request for additional information within ten (10) business days may result in denial of the application. A denial under such circumstances shall not affect subsequent applications filed with the appropriate investigation fee.

(B) Upon approval of an initial broker's license, the director shall collect a nonrefundable license fee, which shall be set by the director from time-to-time, not to exceed one thousand five hundred dollars ($1,500). The license fee shall cover the licensing of the broker's main office in Missouri. Additional licensing fees for the establishment of branch locations will apply as provided for in these rules.

(3) Renewal Applications. Applications for renewal of a broker's license shall be in a form prescribed by the director and may require a nonrefundable license investigation fee which shall be set by the director from time-to-time, not to exceed one thousand five hundred dollars ($1,500). Such completed renewal application shall be received by the director at least sixty (60) days prior to such licensee's biennial renewal date. Upon approval of a biennial renewal of a broker's license, the director shall collect a nonrefundable renewal license fee, which shall be set from time-to-time by the director, not to exceed three thousand dollars ($3,000), one half (1/2) of which is to be paid upon issuance of the license, and the balance one (1) year thereafter. Failure by an existing licensee to submit a renewal application and any applicable investigation fees to the director at least sixty (60) days in advance of a licensee's biennial renewal date may not allow sufficient time for the director to process the licensee's renewal application and may result in the expiration of licensee's existing license.

(4) Fees. The director may assess the reasonable costs of an investigation incurred by the division that are outside the normal expense of any annual or special examination or any other costs incurred by the division as a result of a licensee's violation of sections 443.701 to 443.893, RSMo, or these rules.

(A) For each duplicate original license issued, the director shall collect a duplicate original license fee not to exceed one hundred fifty dollars ($150).

(B) For each amended license issued, the director shall collect an amended original license fee not to exceed one hundred fifty dollars ($150).

(C) For each notice of change of officers or directors or change of name or address, the director shall collect a fee not to exceed one hundred fifty dollars ($150). A broker must report any change in directors or principal officers within thirty (30) days to the director.

(D) Each licensee who intends to operate and maintain an additional full-service office shall

file a Notice of Intent to Establish an Additional Full-Service Office on a form prescribed by the director, thirty (30) days prior to the proposed operation; the director shall collect a fee not to exceed one hundred fifty dollars ($150) at the time the notice is filed.

AUTHORITY: sections 443.821, 443.825, 443.827, 443.833, 443.839, 443.843, 443.869, and 443.887, RSMo Supp. 2013.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010. Amended: Filed Sept. 16, 2013, effective April 30, 2014.

*Original authority: 443.821, RSMo 1994, amended 1995, 2001, 2009; 443.825, RSMo 1994, amended 1995, 2001, 2009, 2009; 443.827, RSMo 1994, amended 1995, 2001, 2009; 443.833, RSMo 1994, amended 1995, 2001, 2009; 443.839, RSMo 1994, amended 1995, 2001, 2009; 443.843, RSMo 1994, amended 1995, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.250 Change in Business Activities

PURPOSE: This rule establishes procedures and guidelines for mortgage loan brokers to follow in the event there is a change in their respective business activities and the fees and notice requirements associated therewith.

(1) A broker shall return his/her license to the director within ten (10) days upon a licensee closing a full-service office or his/her decision to discontinue brokering, originating, or servicing.

(2) Prior to a change of ownership or control, a broker and/or a prospective purchaser shall submit an application on a form prescribed by the director, which shall be submitted with the applicable fee not to exceed one hundred fifty dollars ($150) at least forty-five (45) days prior to the proposed change. All proposed changes must be approved by the director. Failure to obtain the director's prior approval may result in administrative action against the broker's license.

(3) A broker shall file an Application for Change of Name or Address, with the applicable fee, ten (10) business days in advance, on a form prescribed by the director. The name change shall be approved unless deceptively similar to another name or is otherwise prohibited by law.

AUTHORITY: sections 443.843, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.843, RSMo 1994, amended 1995, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.260 Full-Service Office Requirement

PURPOSE: This rule establishes operations and supervision guidelines concerning the full in-state service office requirement.

(1) Each broker shall maintain at least one (1) full-service office located in Missouri consistent with sections 443.703.1(12) and 443.857, RSMo. At a minimum, each Missouri office must be staffed by one (1) supervised licensed mortgage loan originator and such staff as is needed to efficiently administer the tasks mandated by section 443.703.1(12), RSMo. The office location shall have a street address and shall not be a post office box or similar designation and shall be the address where the director is to send all correspondence, official notices, and orders; the broker shall be responsible for keeping the director informed of any changes in said address. In determining whether a broker handles such matters in a reasonably adequate manner, the director may consider consumer complaints received regarding said broker, information obtained from examinations conducted by the division, and reports filed with the division. If it is determined that a broker is not in compliance with section 443.857, RSMo, the director shall notify the broker in writing detailing the requirements to achieve compliance, along with a reasonable deadline.

(A) Each full-service office shall also comply with any applicable local zoning ordinances and shall post any occupational licenses required by law or regulation.

AUTHORITY: sections 443.703.1(12), 443.857, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.703, RSMo 2009; 443.857, RSMo 1994, amended 2001, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.270 Maintenance of Records

PURPOSE: This rule establishes guidelines for the maintenance of required records to be kept by residential mortgage loan brokers and the penalty for failure to do so.

(1) Each broker shall maintain an application log and shall produce it for examination by the director. It shall contain at least the following concerning each residential

mortgage loan application received during the previous thirty-six (36) months:

(A) Full name of all applicants;

(B) Date of application;

(C) Name of the mortgage loan originator responsible for the loan application whose name and Nationwide Mortgage Licensing System and Registry (NMLSR) unique identifier also appears on the application;

(D) Disposition of the mortgage loan application and date of disposition. The log shall indicate the result of the loan transaction. The disposition of the application shall be categorized as one (1) of the following: loan closed, loan denied, application withdrawn, application in process, or other explanation;

(E) Address of the property;

(F) Amount of the loan; and

(G) The terms of the loan and/or loan program.

(2) An application log shall be maintained at the broker's main Missouri office. The log shall be kept current. Records may be kept at a branch, but the broker's main Missouri office must have a current log updated no less frequently than every seven (7) days. The failure to enter said information to the log within seven (7) days from the date of the occurrence of the event required to be recorded in the log shall be deemed a failure to keep the log current.

(3) Failure to maintain an application log or to keep the log current may be grounds for suspension or revocation of the license or other appropriate administrative action and may subject the broker to fines authorized by the Secure and Fair Enforcement Mortgage Licensing Act of 2008.

AUTHORITY: sections 443.869 and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.869, RSMo 1994, amended 1995, 2001, 2009 and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.280 Authorized Advance Fees and Escrow Requirements

PURPOSE: This rule establishes general practices and guidelines for residential mortgage loan brokers with regard to what advance fees may be collected and placement of said fees. This rule also sets forth guidelines for the collection and disbursement of rate-lock fees.

(1) A broker shall not require a borrower to pay any fees or charges prior to the loan closing, except for:

(A) The actual and necessary charges of third parties needed to process the application, which shall be administered pursuant to this rule; and

(B) A rate-lock fee, provided that the written rate-lock fee agreement signed by both the borrower and the proposed lender includes the following terms:

1. The expiration date of the fee agreement;

2. The amount of the loan;

3. The maximum interest rate and maximum discount (points);

4. The term of the loan;

5. The lender is able to perform under the terms of the fee agreement; and

6. Subject to verification, the information submitted by the borrower indicates that the loan will be approved in accordance with the fee agreement.

(2) Refunds on Failure to Close. The ratelock fee must be refunded if the loan does not close in accordance with the fee agreement, except that the fee may be retained upon the lender's ability to demonstrate to the director any of the following reasons: the borrower withdrew the loan application; made a material misrepresentation on the loan application; or failed to provide documentation necessary to the processing or closing of the loan, such documents having been timely requested. When the fee is to be retained, the lender shall send a written notice to the borrower stating the reason for retaining the fee.

(3) Brokers Failure to Close. If a residential mortgage loan is not closed through no fault of the applicant, all the charges shall be refunded to the borrower, except to the extent such charges were incurred in good faith by the lender on behalf of the borrower for third-party services.

(4) Nothing in these rules shall be construed as to allow a broker, that is not a lender, to charge a fee for a rate-lock agreement or otherwise enter into a rate-lock agreement.

(5) Escrow. Brokers, not subject to the Department of Housing and Urban Development escrow regulations, who receive funds that are to be used for actual and necessary third-party expenses needed to process the application shall place said funds with one (1) of the following no later than five (5) days after receipt:

(A) A title insurer, title agency, or title agent not affiliated with a title agency that is authorized to act as an escrow, security, settlement, or closing agent pursuant to Chapter 381, RSMo;

(B) An unaffiliated depository institution as defined in section 443.703.1(5), RSMo, or first-tier subsidiary or service corporation thereof that is acting as an escrow agent as defined by section 443.703.1(9), RSMo; or

(C) A licensed attorney.

AUTHORITY: sections 443.865, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18,2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.865, RSMo 1994, amended 1995, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.290 In-State Office Waiver For Servicers

PURPOSE: This rule establishes the procedures and qualifications needed for servicers to obtain a waiver for the full in-state service office requirement.

(1) Procedures to Obtain Waiver. Prior to the issuance of a waiver pursuant to section 443.812.5, RSMo, of the requirement of maintaining a full-service office in Missouri, an applicant shall obtain a certificate of authority from the Missouri secretary of state. Furthermore, an applicant shall file with the license application an irrevocable consent in a form to be determined by the director, duly acknowledged, that provides suits and actions that may be commenced against the applicant in the courts of this state, and, should it be necessary to bring an action against the applicant, applicant agrees that venue shall lie in Cole County, Missouri.

(2) Qualifications for Waiver. For the purposes of determining if a loan servicer qualifies for the waiver set forth in section 443.812.5, RSMo, the term “primarily engaged in servicing residential mortgage loans” shall be defined as a residential loan servicer that derives seventy-five percent (75%) or more of its gross income from Missouri from residential loan servicing.

AUTHORITY: sections 443.812.5, 443.857, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.812, RSMo 1994, amended 1995, 2001, 2009; 443.857, RSMo 1994, amended 2001, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.300 Annual Report

PURPOSE: This rule establishes procedures and requirements for residential mortgage loan brokers to follow in submitting their annual reports to the director.

(1) Filing Requirements. By March 1 of each year, each broker must file an Annual Report of Residential Mortgage Loan Broker Activity that contains the information mandated by section 443.885, RSMo. If any category(ies) requested has nothing to report, then the proper response is “none.”

(A) The Annual Report of Residential Mortgage Loan Broker Activity shall include the names of the mortgage loan originators and the dollar amount originated by each individual. It shall also include the dollar amount of the loans and with whom the broker had mortgage brokerage agreements including the aggregate dollar amount of loans brokered, funded, and serviced in the state of Missouri for the previous year. Each broker that reports any default or foreclosure shall also furnish the name of the lender who originated the loan.

(B) Brokers that file a Home Mortgage Disclosure Act Report may file a copy thereof in lieu of the report described herein. (C) Each annual report shall be accompanied by an affidavit, attesting to truthfulness of the information contained therein.

AUTHORITY: sections 443.869, 443.885, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.869, RSMo 1994, amended 1995, 2001, 2009; 443.885, RSMo 1994, amended 1995, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.310 Bonding Requirements

PURPOSE: This rule establishes bonding procedures and requirements for residential mortgage loan brokers to follow.

(1) Annual Review and Initial Schedule. The principal amount of the surety bond shall be determined annually by the information contained in the broker’s Annual Report of Residential Mortgage Loan Broker Activity and shall be based on the dollar amount of loans brokered, funded, and serviced in the state of Missouri for the previous year. In the event a broker brokers, funds, and services residential mortgage loans, or any combination thereof, the principal amount of the surety bond shall be based on the category that results in the highest bonding amount. The initial bonding schedule is as follows

Dollar Amount of Loans Brokered/ Funded/Serviced For Previous Year	Bond Amounts For Loans Brokered	Bond Amounts For Loans Funded	Bond Amounts For Loans Serviced
$7,500,000 or less	$50,000	$50,000	$50,000
$7,500,001–$15,000,000	$50,000	$100,000	$100,000
$15,000,001–$22,500,000	$75,000	$150,000	$150,000
$22,500,001–$30,000,000	$100,000	$200,000	$200,000
$30,000,001–$45,000,000	$150,000	$300,000	$300,000
$45,000,001–$60,000,000	$200,000	$400,000	$400,000
$60,000,001 or more	$250,000	$500,000	$500,000

(A) Any increased surety bond as required above shall be filed with the director on or before May 1. Failure to do so shall be grounds for summary suspension of a broker's license.

(B) Surety bonds provided to the director are deemed to be records of the division and will not be released or returned to licensees or to the entities by which they were issued.

AUTHORITY: sections 443.731, 443.849, 443.869, and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.731, RSMo 2009; 443.849, RSMo 1994, amended 1995, 2001, 2009; 443.869, RSMo 1994, amended 1995, 2001, 2009; and 443.887, RSMo 1994, amended 1995, 2001, 2009.

20 CSR 1140-30.320 Exempt List

PURPOSE: This rule establishes procedures and requirements for exempt companies to register with the director.

(1) Registration. The director requests that all exempt entities file a letter disclosing exempt status and the reason therefore at the Division of Finance, Residential Mortgage Section, PO Box 716, Jefferson City, MO 65102. There shall be no fee for said filing.

AUTHORITY: sections 443.869 and 443.887, RSMo Supp. 2009.* Emergency rule filed April 5, 2010, effective April 18, 2010, expired Jan. 26, 2011. Original rule filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.869, RSMo 1994, amended 1995, 2001, 2009 and 443.887, RSMo 1994, amended 1995, 2001, 2009.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

Division 1140 - Division of Finance
Chapter 31 - Residential Mortgage Board

20 CSR 1140-31.010 General Organization - Residential Mortgage Board

PURPOSE: This rule complies with section 536.023, RSMo, which requires each agency to adopt as a rule a description of its operation and the methods where the public may obtain information or make submissions or requests.

(1) The Residential Mortgage Board (board) determines appeals from decisions of the director concerning issuance, denial, revocation, or suspension of residential mortgage loan originator and residential mortgage loan broker licenses and approves mortgage brokering and origination rules promulgated by the director of finance.

(2) Information relating to the board's activities may be directed to the Residential Mortgage Board, 301 West High Street, PO Box 716, Jefferson City, MO 65102, telephone (573) 751-2545, or fax (573) 751-9192.

AUTHORITY: sections 443.816 and 536.023,RSMo Supp. 2009.* This rule originally filed as 4 CSR 140-31.010. Emergency rule filed Nov. 25, 1996, effective Dec. 5, 1996, expired June 2, 1997. Original rule filed Nov. 25, 1996, effective May 30, 1997. Moved to 20 CSR 1140-31.010, effective Aug. 28, 2006. Amended: Filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.816, RSMo 1995, amended 2009 and 536.023, RSMo 1975, amended 1976, 1997, 2004

20 CSR 1140-31.020 Rules of Procedure

PURPOSE: The Residential Mortgage Board was established to hear appeals from certain decisions of the director of finance. In order to facilitate these appeals, the board promulgates these rules of procedure.

(1) Definitions. As used in this rule, except as otherwise required by the context—

(A) Appellants shall mean persons who are appealing a decision of the director;

(B) Board shall mean the Residential Mortgage Board;

(C) Director shall mean the director of the Division of Finance;

(D) Presiding officer shall mean the chairman of the board or any board member designated by the presiding officer to assume those duties; and

(E) Secretary shall mean that member so designated by the board.

(2) Records of the Board. The secretary shall maintain a complete record of all board proceedings. All orders or other actions of the board shall be certified or authenticated by the signature of the secretary.

(3) Appeal Allowed. Appeals will be allowed from the director's decision as provided by law, and the board shall hear the appeal. At the time the appeal is to be heard, testimony will be taken by the board on issues specifically raised by the notice of appeal and any application to intervene. The board will follow the practice of administrative agencies concerning the admissibility of evidence in contested cases as provided for in section 536.070, RSMo, and may receive evidence by deposition as provided in section 536.073, RSMo.

(4) Notice of Appeal. Within ten (10) days of the director mailing notice of the action, the appellant shall file a notice of appeal to the board, specifically stating which finding of the director the appellant challenges. The notice of appeal may be delivered to the board by mailing it to the Division of Finance at PO Box 716, Jefferson City, MO 65102 or by fax at (573) 751-9192.

(5) Docket and Hearing Calendar. The director shall maintain a record of proceedings filed and proceedings set for hearing which shall be available for public inspection at the office of the Division of Finance in Jefferson City, Missouri. The docket and hearing calendar shall be available for public inspection during office hours.

(6) Prehearing Conference. The presiding officer may hold prehearing conferences for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of the number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceedings.

(7) Time and Place. Notice of the day, hour, and place of hearing shall be served at least ten (10) days prior to the time set on all appellants and intervenors, unless the board shall find that public necessity requires hearings be held on shorter notice. The hearing shall be held at a place determined by the presiding officer. At the direction of the board, the director shall serve notice to each party designated as applicant or intervenor.

(8) Limiting Number of Witnesses. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony on a particular issue.

(9) Who May Practice Before the Board. Only licensed attorneys from Missouri, or from other states as provided, shall be permitted to practice before the board. Attorneys who are not members of the Missouri bar shall be permitted to practice before the board under the same rules and limitations as an attorney in good standing in Missouri would be permitted to practice before the corresponding board, official, or other body of the state of the nonresident attorney.

(10) Form and Admissibility. The board will follow in general the practice in the circuit court of the state and the common law rules on admissibility of evidence as interpreted by the courts of the state, except that the board may permit the introduction of hearsay evidence when, in its opinion, circumstances require.

(11) Ruling. The presiding officer shall rule on the admissibility of all evidence. That ruling may be reviewed by the board in determining the matter on its merits.

(12) Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exception to rulings are unnecessary and need not be taken.

(13) Offer of Proof. When a party wishes to make an offer of proof for the record, that offer shall consist of a statement of the substance of the evidence to the admission of which objection has been sustained.

(14) Prepared Testimony. With the approval of the presiding officer, a witness may read into the record his/her testimony and direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies to the presiding officer, the court reporter, and counsel for all parties. Admissibility of testimony shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving of time will result without prejudice to any party, prepared testimony may be copied into the record without having the witness read it aloud; provided, however, that the witness shall be available for cross-examination by any party other than the party on whose behalf the testimony is admitted.

(15) Documentary Evidence. If relevant, material matter offered in evidence is embraced in the document containing other matter, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence but at the discretion of the presiding officer, the relevant material matter may be read into the record or copies received in exhibit. Other parties will be afforded opportunity to examine these documents and to offer into evidence other portions believed material and relevant.

(16) Stipulations. The parties may file a stipulation of the facts or expected testimony and, in this event, the same shall be numbered and used at the hearing. This procedure is desirable wherever practical.

(17) Exhibits. Exhibits shall be legible and, wherever practical, shall be prepared either on paper not exceeding eight and one-half inches by eleven inches (8 1/2" × 11") in size or be bound and folded to that approximate size. Wherever practical, the sheets of each exhibit should be numbered and, where necessary, explained by index.

(18) Marking of Exhibits. Exhibits shall be marked as follows: Appellants' exhibits shall be numbered consecutively in order of their introduction and numbered as follows: Appellant Exhibit 1 and Appellant Exhibit 2, etc. The division's exhibits will be marked alphabetically. When exhibits are offered into evidence, the original and two (2) copies shall be furnished to the board secretary, and the party offering the exhibit should also be prepared to furnish a copy to each member of the board sitting.

(19) Board Records. If any document in the division's records is offered into evidence, that document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may be received into evidence by reference, provided that the particular portions of that document are specifically identified and are otherwise competent, relevant, and material.

(20) Judicial Notice. Official and judicial notice may be taken of those matters which may be noticed by the courts of Missouri.

(21) Additional Evidence. At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, s/he may authorize the filing of specific documentary evidence as a part of the record within a fixed time after the submission, reserving exhibit numbers.

(22) Briefs. If counsel or any party requests permission to file a brief, the presiding officer shall fix the time for filing of briefs. Failure to request, at the close of the testimony, the fixing of time for filing briefs shall waive the right to subsequently file a brief.

(23) Decisions. Proceedings shall be submitted for the board's decision after the taking of testimony and the filing of the briefs, as may be prescribed by the board or its presiding officer. The board's formal decision and order shall be issued as soon as practicable after the proceedings have been submitted. Decisions and orders shall be served by the director mailing or making personal delivery of certified copies to the parties of record. When a party to a proceeding has appeared by representative, service upon that representative shall be deemed service upon the party.

(24) Construction of Rules. These rules shall be liberally construed to secure just, speedy, and inexpensive determination of all issues presented. These rules may be amended at any time by the board.

(25) Forms. The following form of Notice of Appeal is merely illustrated as a general form. The content of particular pleadings will vary depending upon the subject matter and applicable procedural rules.

BEFORE THE RESIDENTIAL MORTGAGE BOARD OF THE STATE OF MISSOURI IN THE MATTER OF THE DENIAL, REVOCATION, ETC. OF THE LICENSE OF XYZ BROKERS BY THE DIRECTOR OF FINANCE.

NOTICE OF APPEAL

You are hereby notified that an appeal is taken from the decision of the Director of Finance denying, etc. a license to the XYZ Brokers for the following reasons:

1. The Director was in error in finding that (State any specific ground relied on in the appeal).

WHEREFORE, petitioner prays said license be (issued, restored, etc.) as petitioned for.

XYZ MORTGAGE BROKER
By Its Attorney
(Mailing Jurat in Standard Form)

(26) Recordation of Proceedings; Assessment of Costs. If the parties consent, the hearing may be recorded by means other than a court reporter. If the board obtains the services of a court reporter, the costs of original and four (4) copies of the transcript shall be taxed against the losing party.

(27) Service of Process. The director or a deputy shall be the agent for service of process on the board in any appeal arising from a decision of the board.

AUTHORITY: sections 443.816 and 536.023, RSMo Supp. 2009.* This rule originally filed as 4 CSR 140-31.020. Emergency rule filed Nov. 25, 1996, effective Dec. 5, 1996, expired June 2, 1997. Original rule filed Nov. 25, 1996, effective May 30, 1997. Moved to 20 CSR 1140-31.020, effective Aug. 28, 2006. Amended: Filed April 15, 2010, effective Nov. 30, 2010.

*Original authority: 443.816, RSMo 1995, amended 2009 and 536.023, RSMo 1975, amended 1976, 1997, 2004.

TITLE 20 - DEPARTMENT OF COMMERCE AND INSURANCE

20 CSR 100-1.050 Standards for Prompt, Fair and Equitable Settlement of Claims

PURPOSE: This rule effectuates or aids in the interpretation of sections 375.1007(3) and 375.1007(4), RSMo.

(1) Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers, (excluding electronically submitted claims under health benefit plans subject to sections 376.383 to 376.384, RSMo).

(A) Within fifteen (15) working days after the submission of all forms necessary to establish the nature and extent of any claim, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny any claim on the grounds of a specific policy provision, condition or exclusion unless reference to that provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

(B) If a claim is denied for reasons other than those described in subsection (1)(A), an appropriate notation shall be made in the claim file of the insurer.

(C) If the insurer needs more time to determine whether a claim should be accepted or denied, it shall so notify the first-party claimant within the time otherwise allotted for acceptance or denial, giving the reasons more time is needed. If the investigation remains incomplete, the insurer, within forty-five (45) days from the date of the initial notification and every forty-five (45) days after, shall send the claimant a letter setting forth the reasons additional time is needed for investigation.

(D) No insurer shall fail to settle any first-party claim on the basis that responsibility for payment should be assumed by others except as otherwise may be provided by policy provisions.

(E) No insurer shall continue negotiations or settlement of any claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. The notice shall be given to first-party claimants thirty (30) days and to third-party claimants sixty (60) days before the date on which the time limit may expire.

(F) No insurer shall make any statement which indicates that the rights of a third-party claimant may be impaired if a form of release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

(G) All insurers offering cash settlements of first-party long-term disability income claims shall develop a present value calculation of future benefits utilizing contingencies, such as mortality, morbidity, and interest rate assumptions, etc., appropriate to the risk. A copy of the amount so calculated shall be given to the insured and signed by him/her at the time a settlement is entered into, and a copy of the amount with the calculations shall be given to the insured at the time the insured is first approached regarding settlement. This acknowledgment of advice of probable value of the contract, together with a copy of the calculations used to arrive at the amount, shall be maintained in the claim file whenever a cash settlement is accepted by the insured. This regulation does not apply to the settlement of liability insurance claims or structured settlements made in settlement of liability insurance claims. The furnishing of a present value calculation to an insured is not construed to imply or impose any liability on the insurer.

(H) For death benefit claims on all life insurance policies, consistent with section 408.020, interest accrues at the rate of nine percent (9%) per annum, unless a different interest rate is specified in the policy, from the date of death of the insured until the date the claim is paid if the insurer fails to pay the policy proceeds within thirty (30) days of submission of proof of death and receipt of all necessary proofs of loss. Interest at the same rate continues to accrue on any unpaid interest not included with the death benefit payment.

(2) Standards for Prompt, Fair, and Equitable Settlements Applicable to Automobile Insurance.

(A) Where liability and damages are reasonably clear, insurers shall not recommend that third-party claimants make claim under their own policies to avoid paying claims under the insurer's insurance policy or insurance contract.

(B) Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate, or to have the automobile repaired at a specific repair shop.

(C) Insurers, upon the claimant's request, shall include the first-party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first-party claimants, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the

deductible recovery unless an outside attorney is retained to collect this recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

(D) Estimates.

1. If an insurer prepares an estimate of the cost of automobile repairs, the estimate shall be in an amount for which it may be reasonably expected the damages can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one (1) or more conveniently located repair shops.

2. No insurer may prepare an estimate, except an estimate prepared at the insured's request by a person or entity having no contractual relationship with the insurer, of the cost of automobile repairs based on the use of an after-market part, unless each of the following conditions are met:

A. The insurer discloses to the claimant in writing, either on the estimate or in a separate document attached to the estimate, the following information in no smaller than ten- (10-) point type: "This estimate has been prepared based on the use of an automobile part(s) not made by the original equipment manufacturer. Parts used in the repair of your vehicle by other than the original manufacturer are required to be at least equal in kind and quality in terms of fit, quality, and performance to the original manufacturer parts they are replacing." All after-market parts installed on the vehicle shall be clearly identified on the repair estimate;

B. No insurer shall require the use of after-market parts in the repair of an automobile unless the after-market part is at least equal in kind and quality to the original part in terms of fit, quality, and performance. Insurers specifying the use of after-market parts shall consider the cost of any modifications which may become necessary when making the repair; and

C. All after-market parts, which are subject to this regulation and manufactured after October 31, 1991, shall carry sufficient permanent identification so as to identify its manufacturer, with the identification being accessible to the extent possible after installation.

3. Definitions.

A. Insurer includes any person authorized to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.

B. After-market part, for purposes of this regulation, means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels, not made by the original equipment manufacturer.

(E) When the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be contained in the claim file. These reductions shall be itemized and appropriate in amount.

(F) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

(G) The insurer shall not use as a basis for cash settlement with a first-party claimant an amount which is less than the amount which the insurer would pay if repairs were made, other than in total loss situations, unless the amount is agreed to by the insured.

(3) Standards for Prompt, Fair, and Equitable Settlements Applicable to Health Insurance.

(A) Precertification. An insurer may require that claimants for health insurance benefits have their course of treatment certified in advance of incurring the claim based upon the course of treatment, so long as the following conditions are met:

1. The rules of the insurer for precertification are fully disclosed to the covered person in advance of any incurred claim or course of treatment; and

2. Precertification determinations are made in a prompt, fair, and equitable manner.

(B) Denial of Precertified Claims.

1. No insurer may deny, in whole or in part, any claim for health insurance benefits if—

A. The claim is based upon a course of treatment which has been precertified; and

B. The claim denial is based upon one (1) or more of the following reasons:

(I) The claim or course of treatment was not medically necessary; or

(II) The claim or course of treatment was experimental.

2. The provisions of paragraph (3)(B)1. of this rule do not apply to any claim against an insurer which has a contract—

A. With the health care provider who provided the treatment upon which the claim is based; and

B. Which provides that the health care provider will hold the insured harmless from the denial of the claim.

(4) Standards for Prompt Investigations of Claims. Every insurer shall complete an investigation of a claim within thirty (30) days after notification of the claim, unless the investigation cannot reasonably be completed within this time.

AUTHORITY: sections 374.045 and 375.1000–375.1018, RSMo 2016.* This rule was previously filed as 4 CSR 190-10.060(6), (7), and (11). Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. Rescinded and readopted: Filed Aug. 16, 1978, effective Dec. 11, 1978. Amended: Filed Sept. 11, 1980, effective Feb. 16, 1981. Amended: Filed Sept. 14, 1981, effective Jan. 15, 1982. Amended: Filed Aug. 4, 1986, effective Jan. 1, 1987. Amended: Filed Jan. 5, 1987, effective June 1, 1987. Amended: Filed Aug. 4, 1987, effective Dec. 24, 1987. Amended: Filed Dec. 9, 1988, effective April 28, 1989. Amended: Filed Nov. 2, 1989, effective Feb. 15, 1990. Emergency amendment filed Feb. 21, 1990, effective March 5, 1990, expired June 2, 1990. Amended: Filed Feb. 26, 1990, effective June 11, 1990. Amended: Filed Dec. 12, 1990, effective June 10, 1991. Amended: Filed May 2, 1991, effective Oct. 31, 1991. Emergency amendment filed May 15, 1991, effective May 25, 1991, expired Sept. 21, 1991. Amended: Filed May 16, 1991, effective Oct. 31, 1991. Emergency amendment filed Oct. 3, 1991, effective Oct. 13, 1991, expired Feb. 9, 1992. Amended: Filed Oct. 3, 1991, effective March 9, 1992. Amended: Filed Oct. 1, 1996, effective June 30, 1997. Amended: Filed Nov. 1, 2007, effective July 30, 2008. Amended: Filed Dec. 13, 2018, effective July 30, 2019.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008 and 375.1000–375.1018, see RSMo 2016.

20 CSR 500-1.700 Motor Vehicles and Goods as Collateral

PURPOSE: This regulation prevents consumers being subjected to duress and charged excessive premiums for relatively insignificant coverage on articles used as collateral for loans. It is designed to stimulate competition for the benefit of the public and the insurance industry. This regulation was adopted pursuant to section 374.045, RSMo and implements sections 303.200, 365.080, 367.170, 375.936, 379.318, 379.351, 379.470 and 408.280, RSMo.

(1) Scope. This regulation covers the stated insurance aspects of goods and of physical damage to motor vehicles subjected to liens under Chapter 365 (Motor Vehicle Time Sales), section 408.100 (Small Loans) and sections 408.250—408.280 (Retail Credit Sales), RSMo. It does not include mobile homes as defined in 20 CSR 500-2.500 nor does it include lenders'/vendors' single interest subject to 20 CSR 500-2.500 except where incorporated by reference. Payment of premium by the lender without charge to the consumer shall exempt any such insurance from this regulation.

(2) Definitions.

(A) "Consumer" includes the purchaser in a credit transaction, the mortgagor of newly acquired or previously owned property, and the equitable owner of any property subject to a lien within the scope of this regulation.

(B) "Goods," as used, means all tangible chattels, personal, and merchandise certificates or coupons exchangeable for this tangible personal property, but does not include motor vehicles, nonprocessed farm products, livestock, money, things in action, or intangible personal property. This term includes personal property which can be or is attached to realty so as to become a fixture whether or not severed or severable.

(C) "Loss payable clause" means any clause duly filed by the insurer with the department as added to a policy affording substantial protection.

(D) "Motor vehicle" includes any new or used automobile, motorcycle, truck, trailer, semi-trailer, truck tractor, or bus.

(E) Substantial protection as used is afforded a consumer when the goods are covered by a standard fire policy with extended coverage endorsement or when the motor vehicle is covered by a policy providing collision and comprehensive insurance and both are duly filed with the department. In these policies, the owner of the property must be protected from his/her risk of casualty loss for the causes covered by these policies and must be sole loss payee absent a loss payable clause. The amount payable to the consumer shall be no less than the actual cash value of the goods or motor vehicle insured.

(3) Substantial Protection.

(A) Lienholders', sellers', interests of both, may be protected only by a standard loss payable clause attached to a policy which substantially protects the consumer's interest in the motor vehicle or goods. No additional premium may be charged for a loss payable clause. Lienholders, sellers of motor vehicles or goods, or both, may not be listed as additional insureds or appear in any other manner as insureds on an automobile or fire insurance policy where the policy is purchased by the owner of the property insured. These policies may not be written in Missouri.

(B) A motor vehicle is substantially protected only when it is insured for at least its actual cash value and not when it is insured only for a lesser loan amount outstanding upon it or the payoff value of that loan. If both the actual cash value and the payoff amount of the loan are to be used as measures of the benefits payable under a policy, then that policy must pay the greater of these two (2) amounts in case of a total loss. The use of any policy provision which limits the benefits payable under motor vehicle insurance to the declining loan balance payable only is prohibited except as provided in 20 CSR 500-2.400.

(C) No insurance carrier shall write the following coverages upon vehicles insured by coverage subject to this regulation unless included as part of an insurance policy substantially protecting the interests of the consumer, subject to the provisions of the

Department of Economic Development, and the department's insurance regulations: fire, theft, and collision and comprehensive (except on vehicles ten (10) years old); towing and labor; and medical payments.

(4) Consumers' Rights.

(A) The consumer shall not be required to obtain insurance from any particular insurer nor through any particular insurance producer or representative of a company as a condition precedent to the granting of a loan. No insurer shall participate or knowingly allow its insurance producers to participate in a scheme of requirements.

(B) If the consumer does voluntarily elect to obtain insurance through the lienholder or seller and files no claim against this coverage, s/he shall have thirty (30) days after the date of the loan an unconditioned right to substitute a valid and collectible policy with a loss payable clause in favor of the lienholder or seller for this coverage, if the substitute was in effect on the date of the loan. If s/he elects to make this substitution, the consumer shall receive a full refund of all premiums paid on the policy purchased from the creditor. A consumer shall not be enticed, induced, or compelled to cancel a valid existing policy insurance s/he has previously purchased on any motor vehicle or goods later included as collateral in a loan.

(C) The consumer shall have the unconditional right to cancel the insurance at any time upon prepayment of the indebtedness or submission of a valid and collectible loss payable endorsement in favor of the lienholder or seller. The insurer shall then refund the premium to the consumer on a pro rata basis, except when coverage is substituted under subsection (4)(B) of this regulation.

(5) Rates.

(A) No insurance carrier writing insurance in connection with consumer loans shall charge a rate in excess of the standard rate for this coverage. The standard rate means the rate(s) on file with the department.

(B) No rate charged for any policy written within the scope of this regulation shall be discriminatory against credit insureds as members of a class compared with insureds having the same hazard who may purchase equivalent coverage independent of the credit transaction. These rates shall not be excessive when viewed in conjunction with any restrictions upon effective competition imposed by any creditor and insurance producer.

(C) No insurance carrier shall write coverage in connection with consumer loans when the premium to be charged for physical damage or property coverage plus the deductible amount set out in the policy exceeds fifty percent (50%) of the value of the collateral so insured.

(D) All premium rates and all schedules of premium rates pertaining to policies of insurance delivered or issued for delivery in this state shall be filed with the director prior to their use in this state. The director shall approve any rate or schedules of premium rates if s/he finds that the rates or schedule of premium rates are reasonable in relation to the benefits provided under the policies of insurance. A premium rate or schedule of premium rates shall be presumed to be reasonable for purposes of this section if the rate or schedule of rates produces or may reasonably be expected to produce a loss ratio of sixty percent (60%) or greater.

(6) Statement. No insurer shall write credit-connected insurance within the scope of this regulation unless the consumer executes as part of his/her application for coverage the following statement or similar statement approved by the director of the department: "I understand that I am free to insure my _____ (auto, motorcycle, or furniture) with whatever licensed company or insurance producer I may choose; that I may do so at any time after the date of this loan; that I have not cancelled existing insurance on my _____if I owned it before this loan; and that this loan cannot be denied me simply because I did not purchase my insurance through the lender or seller."

(7) Training. Any insurance company engaging in coverage subject to this regulation shall be responsible for the education and training of its insurance producers operating in connection with credit institutions to insure that they are fully knowledgeable of the contents of this regulation and any other pertinent insurance laws and regulations. Each company shall be responsible for the continuing training and supervision of the activities of its insurance producers placing that business.

(8) Severability Clause. If any section or portion of a section of these regulations or their applicability to any person or circumstances is held invalid by a court, the remainder of the regulations and the applicability of the provision to other persons or circumstances shall not be affected by it.

AUTHORITY: sections 303.200, 365.080, 367.170, 374.045, 375.936, 379.318, 379.351, 379.470, and 408.280, RSMo 2016.* This rule was previously filed as 4 CSR 190-16.140. Original rule filed Aug. 12, 1974, effective Aug. 22, 1974 as Regulation 10.9. Amended: Filed Aug. 4, 1989, effective Dec.

1, 1989. Amended: Filed July 12, 2002, effective Jan. 30, 2003. Amended: Filed Dec. 13, 2018, effective July 30, 2019.

*Original authority: 303.200, RSMo 1953, amended 2012, 2013; 365.080, RSMo 1963, amended 1989, 2004; 367.170, RSMo 1951, amended 1984; 374.045, RSMo 1967, amended 1993, 1995, 2008; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; 379.318, RSMo 1972; 379.351, RSMo 1972; 379.470, RSMo 1947, amended 2015; and 408.280, RSMo 1961, amended 1989.

Op. Atty. Gen. No. 285, Manford, 10-17-67. Insurance upon the lives of installment credit account holders must be made pursuant to section 408.260, RSMo (Supp. 1965). Companies issuing this insurance must be authorized to do business in Missouri.

20 CSR 500-2.400 Vendors'/Lenders', Single Interest

PURPOSE: This regulation is designed to permit vendors'/lenders' single interest and make that use consonant with the purpose of 20 CSR 500-4.100. This regulation is adopted pursuant to section 374.045, RSMo and implements sections 303.200, 365.080, 367.170, 375.936, 379.400, 379.470 and 408.280, RSMo.

(1) Scope. This regulation covers individual vendors'/lenders' single interest, vendors'/lenders' dual interest or collateral protection insurance policies sold in connection with a credit transaction.

(2) Consumers' Rights. The debtor or consumer, as defined in 20 CSR 500-1.700, shall be vested by the insurance company with all those rights described in section (4) of that regulation. These specifically include the rights of substitution, free choice of insurer and insurance producer and refund upon cancellation. A full and fair disclosure of those rights must accompany the notice to provide insurance.

(3) Notice Required.

(A) In the event acceptable insurance is not provided by the debtor at or before the consummation of the credit transaction or the provided insurance is cancelled, the creditor shall give the debtor written notice of requirement to provide insurance. This notice shall be delivered by first-class mail to the last known address of the debtor or in person and shall contain the following information:

1. That the security instrument requires a specified amount and type of insurance on the collateral, including a loss payable clause for the benefit of the creditor;

2. That this insurance has not been received by the creditor;

3. That the debtor may obtain the required insurance from any insurance producer duly licensed in Missouri s/he may choose and from any company authorized to do business in Missouri;

4. That if the insurance is not received within thirty (30) days, the creditor will obtain insurance to protect the interest of the creditor and charge the debtor, including applicable finance charges at the same rate that the security instrument calls for pertaining to the underlying indebtedness; and

5. That the policy obtained by the creditor will not provide bodily injury nor property damage liability insurance.

(B) This insurance may be from an individual policy or from a policy issued and delivered to the creditor. The individual policy or certificate of coverage must be mailed, first class mail, or delivered in person to the last known address of the debtor, at the time the policy or certificate is issued. This certificate or policy must state in clear language that—

1. No subrogation shall run against the debtor from the insurance company; and

2. In the event of a loss, the insurance company shall pay a minimum of the lesser of the following:

A. The cost of the repair of the collateral less a maximum deductible of two hundred dollars ($200) computed as a minimum deductible of one hundred dollars ($100) plus twenty percent (20%) of the next five hundred dollars ($500);

B. The actual cash value of the collateral; or

C. The outstanding net balance of the credit transaction, provided, however, if the net outstanding balance is less than one thousand dollars ($1000), then the coverage shall be the lesser of that described in subparagraph (3)(B)2.A. or B.;

3. Physical damage to the automobile will be covered under the terms of the policy without being predicated upon the default or delinquency of the debtor or the repossession of the vehicle; and

4. The substance in narrative form of the statement in 20 CSR 500-1.700(6).

(C) Each insurance company, reciprocal, interinsurance exchange or other legal entity doing business subject to this regulation shall be responsible for the continuing training and actions of its insurance producers, as stated in 20 CSR 500-4.100(7).

(4) Policy Requirements. No policy may be used within the scope of this regulation which predicates the insurer's liability upon the default or delinquency in payments by the debtor or upon the repossession of the vehicle. All policies written under it must meet the intent of

this regulation to which end the director will consider substance over form in any determination of conformity.

(5) Premium Rates and Schedules of Premium Rates. All premium rates and all schedules of premium rates pertaining to policies of insurance delivered or issued for delivery in this state shall be filed with the director prior to their use in this state. The director shall approve any rate or schedules of premium rates if s/he finds that the rates or schedule of premium rates are reasonable in relation to the benefits provided under the policies of insurance. A premium rate or schedule of premium rates shall be presumed to be reasonable for purposes of this section if the rate or schedule of rates produces or may reasonably be expected to produce a loss ratio of sixty percent (60%) or greater.

AUTHORITY: sections 303.200, 365.080, 367.170, 374.045, 375.936 and 408.280, RSMo 2000.* This rule was previously filed as 4 CSR 190-17.080. Original rule filed Dec. 20, 1974, effective Dec. 30, 1974. Amended: Filed Dec. 23, 1975, effective Jan. 2, 1976. Amended: Filed Aug. 4, 1989, effective Dec. 1, 1989. Amended: Filed Jan. 13, 1995, effective July 30, 1995. Amended: Filed July 12, 2002, effective Jan. 30, 2003.

*Original authority: 303.200, RSMo 1953; 365.080, RSMo 1963, amended 1989; 367.170, RSMo 1951, amended 1984; 374.045, RSMo 1967, amended 1993, 1995; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; and 408.280, RSMo 1961, amended 1989.

20 CSR 500-2.500 Mobile Homes as Collateral

PURPOSE: This regulation requires certain policy provisions in insurance on mobile homes which are loan collateral. This regulation was adopted pursuant to section 374.045 and implements sections 365.080, 367.170, 375.936, 379.400, 379.470 and 408.280, RSMo.

(1) Definitions.

(A) Mobile home includes:

1. Mobile home, any manufactured housing unit, transportable on its own chassis, axle, and wheels, designed for permanent occupancy when connected to utilities;

2. Travel trailer, any manufactured recreational vehicle, transportable on its own chassis, axle, and wheels when towed by a motor vehicle, designed for temporary occupancy, to include a camper trailer; and

3. Motor home, any self-propelled, licensed, registered motor vehicle, designed for use principally on the public right-of-way as a recreational vehicle and designed to provide temporary living quarters, including truck-mounted camper units.

(B) Dual interest as used means a policy of insurance in which the interests of the lien-holder/vendor and the named insured debtor/borrower are each insured as their interest may appear. Coverage for the debtor shall not be less than the standard fire policy with extended coverage endorsements. Vendors' single interest may be written in conjunction with and incidental to a dual interest policy.

(C) Vendors'/lenders' single interest shall be an incidental coverage written in conjunction with a dual interest policy. This vendors' single interest coverage may include conversion, secretion, embezzlement, collision, and repossession return expense coverages.

(2) Substantial Protection.

(A) Vendors'/lenders' single interest may not be written on mobile homes as a separate policy. It only may be written as a portion of a dual interest policy protecting the interests of the debtor/borrower and the creditor as they may appear.

(B) Lienholders, or sellers of mobile homes, or both, may not be listed as additional insureds or appear in any other manner as insureds on a policy insuring the mobile home where the policy is purchased by the owner of the mobile home. They may be named in a loss payable clause as a payee or be a payee under the vendors'/lenders' single interest portion of that policy.

(C) No policy subject to this regulation may be written unless it covers substantially the actual cash value of the mobile home, except for the vendors'/lenders' single interest portion of that policy which may be measured by the loan balance payable.

(3) Consumers' Rights, Rates, and Training. Insurers doing business subject to this regulation shall comply with the following sections of 20 CSR 500-1.700 to foster open competition among the insurers: section (4) Consumers' Rights, to include providing full and fair written notice of these rights before the underlying mobile home credit transaction is consummated; section (5) Rates; and section (7) Training, to include the proper application of rates to each risk.

(4) Premium Rates and Schedules of Premium Rates. All premium rates and all schedules of premium rates pertaining to policies of insurance delivered or issued for delivery in this state shall be filed with the director prior to their use in this state. The director shall approve any rate or schedules of premium rates if s/he finds that the rates or schedule of premium rates are reasonable in relation to the benefits provided under the policies of insurance. A premium rate or schedule of premium rates shall be presumed to

be reasonable for purposes of this section if the rate or schedule of rates produces or may reasonably be expected to produce a loss ratio of sixty percent (60%) or greater.

AUTHORITY: sections 303.200, 365.080, 367.170, 374.045, 375.936, and 408.280, RSMo 2016.* This rule was previously filed as 4 CSR 190-17.090. Original rule filed Dec. 20, 1974, effective Dec. 30, 1974. Amended: Filed Aug. 4, 1989, effective Dec. 1, 1989. Amended: Filed Jan. 13, 1995, effective July 30, 1995. Amended: Filed Dec. 13, 2018, effective July 30, 2019.

*Original authority: 303.200, RSMo 1953, amended 1999, 2001; 365.080, RSMo 1963, amended 1989, 2004; 367.170, RSMo 1951, amended 1984; 374.045, RSMo 1967, amended 1993, 1995, 2008; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; and 408.280, RSMo 1961, amended 1989.

20 CSR 600-2.110 Revision of Life and Accident and Sickness Rates

PURPOSE: This rule implements the prima facie rates for credit life and credit accident and health specified in section 385.070, RSMo. It also sets forth alternative conditions and rates which will be permitted for credit life insurance and credit accident and health insurance.

(1) Regarding credit life insurance—

(A) Premium rates for credit life insurance are presumed reasonable if consistent with the rates set forth in section 385.070.1(1), RSMo; and

(B) If the credit life insurance policy is of a type different than those described in subsection (1)(A), premium rates for this policy may be determined to be reasonable if they are actuarially consistent with the rates set forth in subsection (1)(A).

(2) Regarding credit accident and sickness insurance—

(A) Premium rates for credit accident and sickness insurance are presumed reasonable if consistent with the schedule stated in section 385.070.1(2), RSMo or, if premiums are paid on the basis of a premium rate per month per thousand dollars of outstanding insured indebtedness, if premium rates are computed according to the following formula, or according to a formula, approved by the director which produces rates actuarially equivalent to the single premium rates:

$$Op_n = \frac{20}{n+1} Sp_n$$

Where

Sp_n = Single Premium Rate per $100 of initial insured indebtedness repayable in $_n$ equal monthly installments;

Op_n = Monthly Outstanding Balance Premium Rate per $1,000; and

$_n$ = Original repayment period, in months.

(3) An insurer may receive approval of a different premium rate in accordance with section 385.070.1(6), RSMo.

(4) Insurers may use the same application forms under this rule whether or not underwriting questions are asked. The department will presume that any application form for which all the relevant underwriting questions have been left unanswered represents a policy which has not been underwritten, and for which prima facie rates are permissible. A form for which any relevant underwriting questions have been answered or filled in represents a policy for which premium increases or decreases are required. Insurers should maintain in their files their rules for those circumstances where underwriting questions are asked. These rules shall be communicated to and followed by the insurer's agents or other producers.

AUTHORITY: sections 374.045, 385.045, and 385.070, RSMo 2016.* This rule was previously filed as 4 CSR 190-13.190. Original rule filed June 12, 1981, effective Oct. 16, 1981. Amended: Filed Nov. 2, 1993, effective July 10, 1994. Amended: Filed July 12, 2002, effective Feb. 28, 2003. Amended: Filed Dec. 13, 2018, effective July 30, 2019.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 385.045, RSMo 1977, amended 1981, 1995; and 385.070, RSMo 1977, amended 1983, 1991, 1992.

20 CSR 600-2.200 Credit Property Insurance

PURPOSE: This regulation is designed to stimulate open competition among insurers to provide insurance coverage in the credit context at rates which are not unfairly discriminatory or excessive. Where property insurance is sold by a creditor in connection with the extension of credit, the regulating forces of open competition may not operate to control rates and extend benefits. This regulation designates rate levels for certain coverages above which rates for insurance sold in the credit context will be presumed excessive and unfairly discriminatory under statutory standards. It is solely because of the lack of effective price and product controlling competition that the promulgation of these standards has become necessary to policyholders and the public interest. This regulation was adopted pursuant to the provisions of section 374.045, RSMo and to implement sections 367.170, 374.190, 375.012, 375.158, 375.936, 385.010 to 385.080, and 408.280, RSMo.

(1) Scope. This regulation applies to credit property as defined in section 385.020, RSMo.

(2) Definitions. The following terms are defined for use in this regulation:

(A) Affiliated insurance producer means any insurance producer of an insurer who receives any employment remuneration from a dealer or lender or sells insurance primarily to debtors of a dealer or lender group of associated dealers or lenders or whose insurance a dealer or lender controls, directly or indirectly, or regularly designates, recommends, refers, or suggests to the buyer that s/he purchase in connection with the negotiation, execution, extension, or renewal of a contract;

(B) Contract includes any credit transaction for household, personal, or family use;

(C) Dealer means any person who extends credit for household, personal, or family use or any successor to a creditor's rights;

(D) Lender is any person engaged in the business of making consumer credit loans as defined in section 367.100.2, RSMo and any assignee of a consumer credit loan agreement to include registrants under Chapter 367, RSMo, state banking associations, savings and loan associations, national banking associations to the extent that federal laws do not preempt this regulation, credit unions, and any director, officer, employee, or insurance producer of such a person; and

(E) Credit property insurance has the same meaning as in section 385.020.1(5), RSMo.

(3) Credit Property Insurance Sold by a Lender (Chapter 367, RSMo).

(A) No insurer may issue through an affiliated agent a policy covering security for a loan made under the regulatory authority of Chapter 367, RSMo which exceeds the replacement value of the property given as security for the loan or covering security for such a loan which is less than three hundred dollars ($300). If the insured elects to cancel a policy sold in connection with such a transaction, the insurer shall remit directly to the insured any premium refund due.

(B) No insurer shall sell any coverage through an affiliated insurance producer other than the standard fire policy with coverage attachment with extended coverage endorsement and replacement cost provision endorsement.

(4) Credit Property Insurance Sold With Credit Transactions (Chapter 408, RSMo).

(A) No insurer may write coverage through an affiliated agent to be sold in this context in which the amount of coverage exceeds the replacement cost of the goods insured.

(B) No insurer may pay a dealer or by contract grant a dealer's interest in the affiliated property insurance which exceeds the original indebtedness under the contract.

(C) No insurer may issue a contract of insurance through an affiliated dealer which covers any goods other than those sold by that dealer under the terms of the contract secured by those goods.

(5) Cancellation Refund Computation. All refunds of any insurance sold subject to this regulation shall be made upon the pro rata refund computation tables.

AUTHORITY: sections 374.045, 374.190, 375.012, 375.041, 375.158, 375.936, 379.318, 379.356, 379.470, and 408.280, RSMo 2016.* This rule was previously filed as 4 CSR 190-16.110. Original rule filed Sept. 11, 1975, effective Nov. 15, 1975. Amended: Filed Sept. 12, 1975, effective Nov. 15, 1975. Amended: Filed Aug 14, 1984, effective Jan. 12, 1985. Amended: Filed Dec. 1, 1997, effective May 30, 1998. Amended: Filed July 12, 2002, effective Jan. 30, 2003. Amended: Filed Dec. 13, 2018, effective July 30, 2019.

*Original authority: 374.045, RSMo 1967, amended 1993, 1995, 2008; 374.190, RSMo 1939, amended 1949, 1967, 1992; 375.012, RSMo 1961, amended 1965, 1967, 1981, 1993, 1997, 2001, 2007; 375.041, RSMo 1985, amended 1992; 375.158, RSMo 1939, amended 1965, 1967, 1993, 2001; 375.936, RSMo 1959, amended 1967, 1969, 1971, 1976, 1978, 1983, 1991; 379.318, RSMo 1972; 379.356, RSMo 1972, amended 2001; 379.470, RSMo 1947, amended 2015; and 408.280, RSMo 1961, amended 1989.

TITLE 15 - ELECTED OFFICIALS

Division 6 - Attorney General
Chapter 7 - Rules for Advertising

15 CSR 60-7.010 Definitions

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407 and may define terms whether or not used in the Act, insofar as the definitions are not inconsistent with the Act. This rule defines certain terms used in the enforcement of the Act and in rules, forms and orders made thereunder.

(1) Unless inconsistent with definitions provided in Chapter 407, RSMo and in these rules, the following terms and phrases shall mean:

(A) Advertisement (including the terms advertise and advertising) shall mean any oral, written, graphic or pictorial statement made by a seller in any manner in the course of the solicitation of business. Advertisement includes, without limitation, any statement or representation made in a newspaper, magazine or other publication, or on radio or television, including cable, or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet or letter, or printed on or contained in any tag or label which is attached to or accompanies any product offered for sale;

(B) Bait offer shall mean an alluring but insincere offer to sell a product which the seller does not intend to- i) sell at all; ii) sell at the price which it offered the product; or iii) provide the product in a quantity to meet the reasonably expected public demand, unless the quantity is specifically stated as limited in the advertisement;

(C) Bait and switch scheme shall mean a plan to make alluring but insincere offers which the seller does not intend to sell when the purpose is to switch consumers from buying the advertised product to buying another product;

(D) Clear and conspicuous (including the terms clearly and conspicuously) shall mean that the statement, representation or term being disclosed is a size, color contrast or audibility and is so placed and presented as to be- i) readily noticeable and ii) reasonably understandable;

(E) Comparative price shall mean the price of a product to which a seller is comparing its current price in any advertisement;

(F) Date as applied to date on which a price comparison is stated in the advertisement in newspapers, catalogs or other printed publications shall mean either the date of publication or distribution or the date on which the completed advertising copy is submitted to the printer for final printing and publication, provided the submission date does not exceed twelve (12) weeks from the date of actual publication or distribution;

(G) Material shall mean that the representation or fact is likely to significantly influence the consumer's purchasing decision;

(H) Original price shall mean a former price which the seller first offered in connection with the product;

(I) Person shall mean an association, corporation, individual, institution, natural person, organization, partnership, trust or any other legal entity;

(J) Price comparison shall mean the direct comparison in any advertisement (expressed wholly or in part in dollars, cents, fractions or percentages) of a seller's current price for a product with any other price, whether or not the other price is actually stated in the advertisement;

(K) Product shall mean any personal property or services or other merchandise sold primarily for personal, family or household use and not for resale or for use or consumption in a trade or business. Product does not include any intangible merchandise sold by any bank, savings institution, trust company, mortgage company, insurance company or other financial institution;

(L) Regular price shall mean a seller's usual and customary price;

(M) Sale shall mean a reduction from the seller's former or future price of the product offered for a limited period of time, except for clearance or closeout situations in which the seller permanently reduces its price in order to remove the product from its inventory;

(N) Seller shall mean any person who offers, advertises or sells any product for sale, rental or lease in this state. Seller includes any officer, agent, employee, salesperson or representative of a seller; and

(O) Trade area shall mean the immediate geographic area within a one hundred (100) mile radius of any outlet of the seller and where the seller's advertisement is disseminated.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.020 False and Misleading Statements

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not make a representation or statement of fact in an advertisement that is false or has the capacity to mislead prospective purchasers.

AUTHORITY: sections 407.020, 407.145 and 570.160, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 402.020 RSMo 1967, amended 1973, 1985, 1986; 407.145, RSMo 1986; and 570.160, RSMo 1977.

15 CSR 60-7.030 Omission of a Material Fact

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not omit any material fact in an advertisement.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.040 Reasonable Basis for Performance Claims

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not make a claim with respect to a product's performance in an advertisement unless the seller has in its possession information sufficient to form a reasonable belief that the claim, in fact, is true. A seller may rely on reasonable performance claims supplied by the manufacturer or supplier of the product.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986. Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.050 Use of Sale Terminology

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not use terminology implying a reduction from a price in effect immediately prior to the advertisement (examples: sale, sale prices, now only $____) unless-

(A) The reduction is, in fact, from a bona fide regular price in effect immediately prior to the advertisement; and

(B) The reduction is meaningful. There shall be a rebuttable presumption that the reduction is not meaningful if the reduction in price is less than five percent (5%), unless the seller clearly discloses the actual price reduction.

(2) The term sale may be used notwithstanding the fact that not all products appearing in the advertisement are offered at reduced prices, if the advertisement clearly identifies which products are not reduced in price.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.060 Price Comparisons and Savings Claims

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) Price Comparison in General.

(A) Examples: $29.99 - Save $10; 20% off all men's shirts.

(B) A seller shall not make any price comparison in which the product being advertised materially differs in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics from the comparative product, unless the seller clearly discloses the material difference in the advertisement with the price comparison.

(2) Price Comparison to Seller's Former Prices.

(A) Examples: Regularly $99, Now $69; $99, Now $69 - Save $30; Originally $99, Now $69; Last Year's Price $99, Now $69.

(B) A seller shall not make a price comparison to a former price, unless the comparative price is actual, bona fide and not illusory or fictitious, and is-

1. A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with

the terms set forth in paragraph (2)(B)1. unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement;

2. A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of the time in the immediate, recent period preceding the advertisement. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)2. unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes the advertisement;

3. A price at which reasonably substantial sales of the product were made to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses, with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)3. unless the seller can show that the percentage of unit sales of the product at the comparative price, or at prices higher than the comparative price, is ten percent (10%) or more of the total unit sales of the product during the disclosed date, time or seasonal period; or

4. A price at which the product was openly and actively offered for sale to the public by the seller in the regular course of the seller's business, and on a regular basis during a reasonably substantial period of time in any period preceding the advertisement, and the advertisement clearly discloses with the price comparison, the date, time or seasonal period of that offer. There shall be a rebuttable presumption that the seller has not complied with the terms set forth in paragraph (2)(B)4. unless the seller can show that the product was offered for sale at the comparative price, or at prices higher than the comparative price, forty percent (40%) or more of the time during a period of time, not less than thirty (30) days nor more than twelve (12) months, which includes or is included within the disclosed date, time or seasonal period.

(C) A seller shall not make any price comparison to a former price that is not based on the price in effect immediately preceding the reduction unless the seller clearly discloses that intermediate price reductions have been made.

(3) Price Comparison to Seller's Future Prices.

(A) Examples: After Sale $99, Now $69; Save $30, Now $69, Will be $99.

(B) A seller shall not make any price comparison referencing a higher price at which any product will be offered or sold in the future unless -

1. The advertisement clearly discloses that the price comparison is based upon a future price increase;

2. The effective date of the future higher price, if more than ninety (90) days after the price comparison is first stated in an advertisement, is clearly disclosed in the advertisement; and

3. The future higher price increase takes effect on the date disclosed in the advertisement or, if not disclosed in the advertisement, within ninety (90) days after the price comparison is stated in the advertisement and the price increase remains in effect for at least fifteen (15) days, except where compliance becomes impossible because of circumstances beyond the seller's control.

(4) Price Comparison to a Competitor's Prices.

(A) Examples: Compare at $99, Now $69; Comparable value $99, Our price $69.

(B) A seller shall not make any price comparison based on a competitor's price unless-

1. The competitor's price is either a price at which the competitor sold or offered products for sale at any time within the ninety (90)-day period immediately preceding the date on which the price comparison is stated in the advertisement;

2. The competitor's price is a price that is representative of prices at which the products are sold or offered for sale in the trade area in which the price comparison is made and is not an isolated price; and

3. Disclosure is made with the price comparison that the price used as a basis for the comparison was not the seller's own price.

(C) Notwithstanding paragraph (4)(B)2., a seller may reference a competitor's price outside the trade area in which the price comparison is made, provided the seller clearly discloses that the prices are offered by competitors in other geographic areas, clearly discloses the other geographic area in which the price comparison is made, and clearly discloses

that prices may vary in the trade area in which the price comparison is made.

(5) Range of Savings or Price Comparison Claims.

(A) Examples: Save from 10% to 50% off.

(B) A seller shall not state or imply that any products are being offered at a range of reduced prices or at a range of percentage or fractional discounts, unless-

1. The highest price or lowest discount is clearly and conspicuously disclosed in the advertisement and, if the lowest price or highest of the range of discounts is disclosed;

2. An appreciable number of items are offered at the lowest price or highest savings or discount advertised; and

3. The type size of the lowest price or highest of the range of discounts is not so exaggerated as to obscure the fact that there is a range of savings.

(6) Price Comparison to List Price or Similar Comparisons.

(A) A seller shall not make any price comparison to a manufacturer's list price, a manufacturer's suggested retail price or other similar comparisons unless-

1. The list price or suggested retail price is the price at which the product is offered by a substantial number of sellers in the seller's trade area;

2. The list price or suggested retail price is a seller's bona fide former price and in compliance with the provisions of 15 CSR 60-7.060(2); or

3. The seller uses its best efforts and is unable to ascertain that the list price or suggested retail price is the price at which the product is offered by a substantial number of sellers in the seller's trade area. In this circumstance, a seller may reference a list price or suggested retail price in relation to its current price as long as no savings are claimed and the seller clearly discloses that the list price or suggested retail price may not necessarily be the price at which the product is sold in the trade area.

(B) A list or suggested retail price permanently imprinted on or affixed to a product or its container by the manufacturer, and not under the control of or instigated by the seller, need not be covered or obliterated when the seller's current offering price is attached to, printed on or placed on a label, tag or sign accompanying the product, providing that no sale is claimed and no other price comparison is made from it.

(7) Use of Terms - Free, Two for Price of One, Buy One, Get One Free.

(A) A seller shall not state or imply that products are being offered for free or words of similar import (Buy one pair of shoes, second pair free) unless-

1. The seller clearly and conspicuously discloses all material conditions which are imposed on the sale; and

2. The price indicated by the seller as its price for the products that must be purchased as a condition to receiving the free or bonus item is the seller's own former or future price for those products as determined in accordance with 15 CSR 60-7.060(2) or (3).

(8) Savings Claims Without Disclosing the Basis of the Comparative Price.

(A) Examples: 20% off; Clearance $59, Save $30.

(B) A seller shall not advertise a product as reduced in price without specifically disclosing the basis of the comparison unless the price comparison is a comparison to a seller's former price in compliance with 15 CSR 60-7.060(2).

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.070 Records of Fact for Price Comparison or Savings Claims

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not use any price comparison or savings claims in its advertisement of products in this state unless it maintains adequate records which disclose the factual basis for the price comparison or savings claims and from which the validity of any claim can be established. These records shall be maintained for at least twelve (12) months from the date of the advertisement.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.080 Bait Offers and Availability of Advertised Merchandise

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not-

(A) Make bait offers; or

(B) Advertise any product unless the seller has that product in stock or available for sale in sufficient quantities to meet reasonably anticipated customer demand during the effective period of the advertisement, unless-

1. The seller clearly discloses in its advertisement that quantities are limited or the restrictions apply to the advertised offer;

2. The seller ordered the advertised product in a timely manner and in sufficient quantities to meet reasonably expected demand, but conditions beyond a seller's control prevented it from having the product in stock during the selling period and the seller was unable to cancel or amend the advertisement; or

3. In connection with an advertisement, sale or offering for sale by retail food stores of food or grocery products, the seller offers-

A. A raincheck entitling prospective purchasers to purchase the advertised product at the advertised price and the seller actually has the product available within a reasonable time; or

B. At the advertised price or at a comparable price reduction a similar product that is at least comparable in value to the advertised product.

AUTHORITY: sections 407.020, 407.145 and 570.170, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986; 407.145, RSMo 1986; and 570.170, RSMo 1977.

15 CSR 60-7.090 Bait and Switch Scheme

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not-

(A) Employ any bait and switch scheme;

(B) Publish any advertisement unless it is a bona fide offer to sell the advertised product; or

(C) Use any advertising that creates a false impression about the product being offered in order to lay the foundation for a later switch to another product.

(2) The following factors, without limitation because of enumeration, may be considered in determining the existence of a bait and switch scheme:

(A) Refusing to show or demonstrate the advertised product;

(B) Disparaging the advertised product, its warranty, availability, services and parts, credit terms, etc.;

(C) Refusing to take orders for the advertised product or to deliver it within a reasonable time;

(D) Demonstrating or showing a defective sample of the advertised product;

(E) Having a sales compensation plan designed to penalize salespersons who sell the advertised product; or

(F) Having a display plan designed to draw attention away from the advertised product to another product.

AUTHORITY: sections 407.020, 407.145 and 570.170, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986; 407.145, RSMo 1986; and 570.170, RSMo 1977.

15 CSR 60-7.100 Retail Price Labeling

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A price label permanently imprinted on or affixed to a product or its container by the manufacturer or supplier, and not under the control of or instigated by the seller, or which is required to be attached to that product under federal law, need not be covered or obliterated when the seller's current offering price is attached to, printed on or placed on a label, tag or sign accompanying the product, provided that no other price comparison based on that label is made by the seller.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

15 CSR 60-7.110 Lowest Price Guarantee

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo (1986). This rule specifies acts and practices that are deemed to be violative of section 407.020, RSMo (1986).

(1) A seller shall not make any reference to a policy of matching or bettering competitors' prices in any television or print advertisement unless the seller clearly and prominently discloses in the advertisement all material conditions and limitations that apply and that full details are posted at the seller's place of business.

(2) A seller shall not make any reference to a policy of matching or bettering competitors' prices in any radio advertisement if material limitations exist unless the advertisement includes the statement: Some substantial conditions and limitations apply. See full detail in store, or words to that effect.

(3) Any policy of matching or bettering competitors' prices shall not place an unrealistic or unreasonable burden on the consumer.

AUTHORITY: sections 407.020 and 407.145, RSMo 1986.* Original rule filed June 25, 1990, effective Nov. 30, 1990.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986 and 407.145, RSMo 1986.

TITLE 15 - ELECTED OFFICIALS

Division 60 - Attorney General
Chapter 8 - Unfair Practices

15 CSR 60-8.010 Definitions

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Unless inconsistent with the definitions provided in Chapter 407, RSMo, the following terms and phrases shall mean:

(A) Actual cost shall mean money expended or credit incurred and no allowance shall be made for the replacement cost of merchandise that the seller is reasonably assured of recouping the replacement cost as part of the price of subsequent sales of the merchandise;

(B) Consumer shall include any person (as defined in section 407.010.5., RSMo) who purchases, may purchase or is solicited for purchase of merchandise;

(C) Disaster area shall mean an area declared to be a disaster area by either state or federal authorities. A disaster area, for purposes of 15 CSR 60-8.030, will expire upon the termination date stated in the order or declaration issued by state or federal authorities, or if no termination date is stated, shall expire thirty (30) days from the date of issuance of the order or declaration. Such order or declaration may be renewed by state or federal authorities. Each renewal will expire upon the termination date stated in the renewal, or if no termination date is stated, shall expire thirty (30) days from the date of issuance of the renewal;

(D) Excessive price shall mean a seller's price that is not justified by the seller's actual cost of acquiring, producing, selling, transporting, and delivering the actual product sold plus the seller's usual and customary profit margin prior to the onset of the natural disaster. An excessive price, for purposes of determining a violation of 15 CSR 60-8.030, shall not include any price agreed to by a buyer and seller prior to the declaration of an applicable disaster;

(E) Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade;

(F) Natural disaster shall mean property damage caused by heavy rainfall, storm, tornado, flooding, or earthquake; and

(G) Necessity shall include all materials and services related to, but not limited to, food, water, medical treatment, sanitation, construction, repair, and transportation.

AUTHORITY: section 407.020, RSMo Supp. 2010 and section 407.145, RSMo 2000.* Original rule filed March 18, 1994, effective Sept. 30, 1994. Amended: Filed Dec. 2, 2010, effective July 30, 2011.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992, 1994, 1995, 2000, 2008 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-8.020 Unfair Practice in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) An unfair practice is any practice which-

(A) Either-

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

(2) Proof of deception, fraud, or misrepresentation is not required to prove unfair practices as used in section 407.020.1., RSMo. (See Federal Trade Commission v. Sperry and Hutchinson Co., 405 U.S. 233, 92 S.Ct. 898, 31 L.Ed.2d 170 (1972); Marshall v. Miller, 302 N.C. 539, 276 S.E.2d 397 (N.C. 1981); see also, Restatement, Second, Contracts, sections 364 and 365).

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.030 Price Gouging

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to-

(A) Take advantage of a person's physical or mental impairment or hardship caused by extreme temporary conditions, and charge a price substantially above the previous market price of the merchandise in seller's trade area;

(B) Charge within a disaster area an excessive price for any necessity; or

(C) Charge any person an excessive price for any necessity which the seller has reason to know is likely to be provided to consumers within a disaster area.

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.040 Duty of Good Faith

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to violate the duty of good faith in solicitation, negotiation and performance, or in any manner fail to act in good faith (see section 400.2-103(1)(b), Restatement, Second, Contracts section 205).

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.050 Duress and Undue Influence

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to use or employ any duress, or undue influence (see section 400.2-103(1)(b), Restatement, Second, Contracts sections 205, 364).

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.060 Unsolicited Merchandise and Negative Option Plans

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific

practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any seller in connection with the advertisement or sale of merchandise to bill, charge or attempt to collect payment from consumers, for any merchandise which the consumer has not ordered or solicited.

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.070 Unilateral Breach of Contract

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the sale of merchandise to unilaterally breach unambiguous provisions of consumer contracts (see Orkin Exterminating Company, Inc. v. Federal Trade Commission, 849 F.2d 1354 (11th Cir. 1988)).

AUTHORITY: sections 407.020 (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.080 Unconscionable Practices

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the sale of merchandise to engage in any unconscionable act or practice, or to use any unconscionable contract or contract term.

(2) It is unconscionable to take advantage of an unequal bargaining position and obtain a contract or term which results in a gross disparity of values exchanged (see section 400.2-302, RSMo; Restatement, Second, Contracts section 208).

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.090 Illegal Conduct

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to engage in any method, use or practice which-

(A) Violates state or federal law intended to protect the public; and

(B) Presents a risk of, or causes substantial injury to consumers.

AUTHORITY: sections 407.020, RSMo (Cum. Supp. 1992) and 407.145, RSMo (Cum. Supp. 1993).* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo (1967), amended 1973, 1985, 1986, 1992 and 407.145, RSMo (1986), amended 1993.

15 CSR 60-8.100 Threatening to File or Filing Suit on Certain Consumer Debt

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act.

This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is an unfair practice for any person to threaten to file a civil action, or to file a

civil action, for a debt that is primarily for personal, family, or household purposes, if such debt has been-

(A) In default for a period of time such that the statute of limitation to file a civil action for collection of the debt has expired;

(B) Discharged by a bankruptcy court;

(C) Declared void or unenforceable by a court of competent jurisdiction; or

(D) Deemed fully satisfied pursuant to an agreement with the consumer and the creditor or its assigns.

AUTHORITY: section 407.020, RSMo Supp. 2014, and section 407.145, RSMo 2000.* Original rule filed Nov. 30, 2015, effective June 30, 2016.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992, 1994, 1995, 2000, 2008, 2014 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-8.110 Reaffirmation of Consumer Debt Without Valuable Consideration

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act.

This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are unfair, but this rule enumerates specific practices which are unfair and are violative of section 407.020, RSMo.

(1) It is unfair practice to seek or obtain without valuable consideration a reaffirmation of an obligation arising out of any debt that is primarily for personal, family, or household purposes, and-

(A) For which the statute of limitation to file a civil action for collection of the debt has expired;

(B) That has been discharged in bankruptcy;

(C) That has been declared void or unenforceable by a court of competent jurisdiction; or

(D) That has been deemed fully satisfied pursuant to an agreement with the consumer and the creditor or its assigns.

AUTHORITY: sections 407.020, RSMo Supp. 2014, and section 407.145, RSMo 2000.* Original rule filed Nov. 30, 2015, effective June 30, 2016.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992, 1994, 1995, 2000, 2008, 2014 and 407.145, RSMo 1986, amended 1993.

TITLE 15 - ELECTED OFFICIALS

Division 60 - Attorney General
Chapter 9 - Fraudulent and Omissive Acts and Practices

15 CSR 60-9.010 Definitions

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Unless inconsistent with the definitions provided in Chapter 407, RSMo, the following terms and phrases shall mean:

(A) Assertion may be words, conduct or pictorial depiction, and may convey past or present fact, law, value, opinion, intention or other state of mind;

(B) Consumer shall include any person (as defined in section 407.010.5., RSMo) who purchases, may purchase or is solicited for purchase of merchandise; and

(C) Material fact is any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.020 Deception in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchan-dising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.

(2) Reliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1., RSMo (see *State ex rel. Danforth v. Independence Dodge, Inc*., 494 SW2d 362 (Mo. App., W.D. 1973); *State ex rel. Ashcroft v. Marketing Unlimited*, 613 SW2d 440 (Mo. App., E.D. 1981); *State ex rel. Webster v. Areaco Investment Co*., 756 SW2d 633 (Mo. App., E.D. 1988)). Deception may occur in securing the first contact with a consumer and is not cured even though the true facts or nature of the advertisement or offer for sale are subsequently disclosed. *Exposition Press, Inc. v. F.T.C*., 295 F.2d 869 (2d Cir. 1961).

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.030 Deceptive Format

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are deceptive, but this rule enumerates specific practices which are deceptive and are violative of section 407.020, RSMo.

(1) It is deception for any person in an advertisement or sales presentation to use any format which because of its overall appearance has the tendency or capacity to mislead consumers.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.040 Fraud in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Fraud includes any acts, omissions or artifices which involve falsehood, deception, trickery, breach of legal or equitable duty, trust, or confidence, and are injurious to another or by which an undue or unconscientious advantage over another is obtained.

(2) Fraud, as used in section 407.020.1., RSMo is not limited to common law fraud or deceit and is not limited to finite rules, but extends to the infinite variations of human invention (see *Howard v. Scott*, 225 Mo 685, 125 SW 1158 (1910); *Skidmore v. Back*, 512 SW2d 223 (Mo.App. S.D. 1974); *United States v. Bishop*, 825 F.2d 1278 (8th Cir. 1987); *State v. Shaw*, 847 S.W.2d 768 (Mo. banc 1993)).

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.050 False Pretense in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) False pretense is any use of trick or deception, forgery, or false and fraudulent representation, statement, pretense, instrument or device with the intent to defraud (see *State v. Fields*, 366 SW2d 462 (Mo. 1963)).

(2) Reliance and injury are not elements of false pretense as used in section 407.020.1., RSMo.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.060 False Promise in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) False promise is any statement or representation which is false or misleading as to the maker's intention or ability to perform a promise, or likelihood the promise will be performed.

(2) Reliance and injury are not elements of false promise as used in section 407.020.1., RSMo.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.070 Misrepresentation in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) A misrepresentation is an assertion that is not in accord with the facts (see Restatement, Second, Contracts, section 159; *Packard v. K C One, Inc.*, 727 SW2d 435 (Mo.App., W.D. 1987)).

(2) Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other capable mental state such as recklessness or negligence, are not elements of misrepresentation as used in section 407.020.1, RSMo. (see *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 SW2d 362 (Mo.App., W.D. 1973); State ex rel. *Ashcroft v. Marketing Unlimited*, 613 SW2d 440 (Mo.App., E.D. 1981); *State ex rel. Webster v. Areaco Investment Co.*, 736 SW2d 638 (Mo.App., E.D. 1988)).

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1993, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.080 Material Untruths

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Methods, acts, uses and practices specified are not intended to be an all inclusive list of misrepresentation but this rule enumerates specific acts and practices which are misrepresentations and are violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make an untrue statement of material fact.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.090 Half-Truths

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Methods, acts, uses and practices specified are not intended to be an all inclusive list of misrepresentation, but this rule enumerates specific practices which are misrepresentations and are violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they are made, not misleading.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1993, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.100 Fraudulent Misrepresentations

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Methods, acts, uses and practices specified are not intended to be an all inclusive list of misrepresentation, but this rule enumerates the specific acts and practices which are misrepresentations and are violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make any fraudulent assertion.

(2) An assertion is fraudulent if the person intends his/her assertions to induce a consumer to purchase merchandise, and the person-

(A) Knows or believes that the assertion is not in accord with the facts; or

(B) Knows that he does not have a reasonable basis for his/her assertion (see Restatement, Second, Contracts, section 162).

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.110 Concealment, Suppression or Omission of Any Material Fact in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.

(2) Suppression of a material fact is any method, act, use or practice which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.

(3) Omission of a material fact is any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her.

(4) Reliance and intent that others rely upon such concealment, suppression or omission are not elements of concealment, suppression or omission as used in section 407.020.1., RSMo.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993.* Original rule filed March 18, 1994, effective Sept. 30, 1994.
*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.