

SECOND REGULAR SESSION

# HOUSE BILL NO. 1655

91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TROUPE.

Read 1<sup>st</sup> time January 28, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2738L.011

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## AN ACT

To amend chapter 408, RSMo, by adding thereto eight new sections relating to high interest home loans.

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

Section A. Chapter 408, RSMo, is amended by adding thereto eight new sections, to be known as sections 408.740, 408.750, 408.760, 408.770, 408.780, 408.790, 408.800, and 408.810, to read as follows:

**408.740. As used in sections 408.740 to 408.810, the following terms mean:**

- (1) "Annual percentage rate", the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act and the regulations adopted thereunder by the Federal Reserve Board;**
- (2) "Consumer", any prospective borrower, prospective coborrower, prospective cosigner, or prospective guarantor of a home loan;**
- (3) "Consumer loan", a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. Consumer loan does not include the following:**
  - (a) A reverse mortgage;**
  - (b) An open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations;**
  - (c) A consumer credit transaction that is secured by rental property or second homes;**
  - (d) A bridge loan with a maturity of less than one year if the purpose of the loan is a bridge loan connected with the acquisition or construction of a dwelling intended to**

18 become the consumer's principal dwelling;

19 (4) "Covered loan", a consumer loan in which the original principal balance of the  
20 loan does not exceed two hundred fifty thousand dollars in the case of a mortgage or deed  
21 of trust, and where one of the following conditions are met:

22 (a) For a mortgage or deed of trust, the annual percentage rate at consummation  
23 of the transaction will exceed by more than eight percentage points the yield on Treasury  
24 securities having comparable periods of maturity on the fifteenth day of the month  
25 immediately preceding the month in which the application for the extension of credit is  
26 received by the creditor; or

27 (b) The total points and fees payable by the consumer at or before closing for a  
28 mortgage or deed of trust will exceed six percent of the total loan amount;

29 (5) "Improper lending practices", unlawful, unfair, deceptive, or fraudulent  
30 lending practices;

31 (6) "Lender", any entity which originated more than five home loans within the  
32 past twelve-month period or acted as an intermediary between originators and borrowers  
33 on more than five home loans within the past twelve-month period;

34 (7) "Obligor", each borrower, coborrower, cosigner, or guarantor obligated to  
35 repay a loan;

36 (8) "Original principal balance", the total initial amount the consumer is obligated  
37 to repay on the loan;

38 (9) "Originate", to arrange, negotiate, or make a consumer loan;

39 (10) "Points and fees" shall include the following:

40 (a) All items required to be disclosed as finance charges under Sections 226.4(a) and  
41 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff  
42 Commentary, as amended from time to time, except interest;

43 (b) All compensation and fees paid to mortgage brokers in connection with the loan  
44 transaction; and

45 (c) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal  
46 Regulations, only if the person originating the covered loan receives direct compensation  
47 in connection with the charge.

408.750. 1. Any lender who originates any consumer loan shall establish and  
2 implement on a continuous basis a best lending practices plan. The purpose of this plan  
3 shall be the development of best lending practices with respect to these consumer loans,  
4 and the implementation of a system to ensure continued compliance with these practices.  
5 The elements of this plan shall include, but not be limited to, all of the following:

6 (a) Adopting best lending standards which are designed to prevent improper

7 **lending practices, including, at a minimum, violations of section 408.760 or 408.780;**

8 **(b) Training personnel concerning the use of best lending standards and the**  
9 **detection and prevention of improper lending practices;**

10 **(c) Reviewing the performance of employees, agents, and independent contractors**  
11 **in complying with best lending standards;**

12 **(d) Taking adverse action against employees, agents, and independent contractors**  
13 **that engage in a pattern of improper lending practices;**

14 **(e) Reporting improper lending practices that have resulted in termination of an**  
15 **employee, agent, or independent contractor to the lender's executive office;**

16 **(f) Making good faith efforts to resolve in a prompt and reasonable manner each**  
17 **consumer complaint relating to improper lending practices no later than sixty days of**  
18 **receipt of the complaint. Resolution of a consumer complaint by the lender pursuant to**  
19 **this paragraph shall not absolve the lender from any other administrative, civil, or criminal**  
20 **actions. The lender shall maintain a system of aging of complaints that describes the**  
21 **nature and the disposition of the complaint.**

22 **2. Every lender shall, as necessary, update its best lending practices plan at least**  
23 **annually. At the time disclosures are made pursuant to Regulation Z (12 C.F.R. 226), the**  
24 **lender shall provide the prospective borrower with a separate written notice printed in at**  
25 **least 14-point type. The notice shall include a statement that the lender has implemented**  
26 **a best lending practices plan, explain the manner in which the prospective borrower may**  
27 **request and obtain a copy of the plan, and provide a telephone number to call for inquiries**  
28 **concerning the plan. In addition, the lender shall disclose the plan to its prospective**  
29 **borrowers upon request and at the time of the origination of the loan. The plan shall**  
30 **include a telephone number to call for inquiries concerning the plan.**

31 **3. Every lender shall make a written or electronic copy of its best practices plan**  
32 **available to the public upon request and shall make a written copy available at the lender's**  
33 **place of business.**

**408.760. 1. No covered loan may include a prepayment fee or penalty after the first**  
2 **thirty-six months after the date of consummation of the loan.**

3 **2. A covered loan may include a prepayment fee or penalty up to the first thirty-six**  
4 **months after the date of consummation of the loan if:**

5 **(a) The person who originates the covered loan has also offered the consumer a**  
6 **choice of another product without a prepayment fee or penalty;**

7 **(b) The person who originates the covered loan has disclosed in writing to the**  
8 **consumer at least three business days prior to loan consummation the terms of the**  
9 **prepayment fee or penalty to the consumer for accepting a covered loan with the**

10 prepayment penalty and the rates, points, and fees that would be available to the consumer  
11 for accepting a covered loan without a prepayment penalty;

12 (c) The person who originates the covered loan has limited the amount of the  
13 prepayment fee or penalty to an amount not to exceed the payment of six months' advance  
14 interest, at the contract rate of interest then in effect, on the amount prepaid in any twelve-  
15 month period in excess of twenty percent of the original principal amount;

16 (d) A covered loan will not impose the prepayment fee or penalty if the covered  
17 loan is accelerated as a result of default;

18 (e) The person who originates the covered loan will not finance a prepayment  
19 penalty through a new loan that is originated by the same person.

20 3. At origination a covered loan with a term of five years or less may not provide  
21 for a payment schedule with regular periodic payments that when aggregated do not fully  
22 amortize the principal balance as of the maturity date of the loan.

23 4. For a payment schedule that is adjusted to account for the seasonal or irregular  
24 income of the consumer, the total installments in any year shall not exceed the amount of  
25 one year's worth of payments on the loan. This prohibition does not apply to a bridge loan.  
26 For purposes of this subsection, "bridge loan" means a loan with a maturity of less than  
27 eighteen months that only requires payments of interest until the time when the entire  
28 unpaid balance is due and payable.

29 5. A covered loan shall not contain a provision for negative amortization such that  
30 the payment schedule for regular monthly payments causes the principal balance to  
31 increase, unless the covered loan is a first mortgage and the lender discloses to the  
32 consumer that the loan contains a negative amortization provision that may add principal  
33 to the balance of the loan.

34 6. A covered loan shall not include terms under which periodic payments required  
35 under the loan are consolidated and paid in advance from the loan proceeds.

36 7. A covered loan shall not contain a provision that increases the interest rate as a  
37 result of a default. This provision does not apply to interest rate changes in a variable rate  
38 loan otherwise consistent with the provisions of the loan documents, provided the change  
39 in the interest rate is not triggered by the event of default or the acceleration for the  
40 indebtedness.

41 8. A person who originates a covered loan shall not pay a contractor under a home-  
42 improvement contract from the proceeds of a covered loan other than by an instrument  
43 payable to the consumer or jointly to the consumer and the contractor or, at the election  
44 of the consumer, to a third-party escrow agent for the benefit of the contractor in  
45 accordance with terms and conditions established in a written escrow agreement signed by

46 the consumer, the person who originates a covered loan, and the contractor prior to the  
47 disbursement of funds. No payments, other than progress payments for home-  
48 improvement work that the consumer certifies is completed, shall be made to an escrow  
49 account or jointly to the consumer and the contractor unless the person who originates the  
50 loan is presented with a signed and dated completion certificate by the consumer showing  
51 that the home-improvement contract was completed to the satisfaction of the consumer.

52 **9. No person who originates a covered loan may recommend or encourage a**  
53 **consumer to default on an existing consumer loan or other debt in connection with the**  
54 **solicitation or making of a covered loan that refinances all or any portion of the existing**  
55 **consumer loan or debt.**

56 **10. A covered loan shall not contain a call provision that permits the lender, in its**  
57 **sole discretion, to accelerate the indebtedness. This prohibition does not apply if**  
58 **repayment of the loan has been accelerated in accordance with the terms of the loan**  
59 **documents as a result of the consumer's default, pursuant to a due-on-sale provision, or**  
60 **due to fraud or material misrepresentation by a consumer in connection with the loan or**  
61 **the value of the security for the loan. A lender shall not refinance or arrange for the**  
62 **refinancing of a consumer loan such that the new loan is a covered loan that is made for**  
63 **the purpose of refinancing, debt consolidation or cash out, that does not result in an**  
64 **identifiable benefit to the consumer, considering the consumer's stated purpose for seeking**  
65 **the loan, fees, interest rates, finance charges, and points.**

66 **11. A lender or broker who originates a covered loan shall not steer, counsel, or**  
67 **direct any prospective consumer to accept a loan product with a risk grade less favorable**  
68 **than the risk grade that the consumer would qualify for based on that person's then**  
69 **current underwriting guidelines, prudently applied, considering the information available**  
70 **to that person, including the information provided by the consumer. A person shall not**  
71 **be deemed to have violated this section if the risk grade determination applied to a**  
72 **consumer is reasonably based on the person's underwriting guidelines if it is an**  
73 **appropriate risk grade category for which the consumer qualifies with the person.**

74 **12. No lender may sell disability, unemployment, life and property credit insurance**  
75 **or other similar products, where the consumer is not informed that the product or service**  
76 **is not required in order to obtain the loan and where it is not disclosed that the full cost of**  
77 **the product or service to the borrower is, or is not, spread over the life of the loan.**

78 **13. No lender may make a loan to an obligor who the lender reasonably knows or**  
79 **suspects is mentally incapacitated.**

80 **14. No lender may obtain or induce an agreement or other instrument in which**  
81 **blanks are left to be filled in after execution.**

82           **15. No lender may delay the closing of a loan for the sole purpose of increasing**  
83 **interest, costs, fees, or charges payable by the borrower.**

84           **16. No lender may make payment of any kind, whether directly or indirectly, to an**  
85 **in-house or fee appraiser of a government or private money-lending agency, with which**  
86 **an application for a loan has been filed, for the purpose of influencing the independent**  
87 **judgment of the appraiser with respect to the value of real estate that is to be covered by**  
88 **the loan.**

89           **17. A person who originates a covered loan shall not avoid, or attempt to avoid, the**  
90 **application of sections 408.740 to 408.810 by doing the following:**

91           **(1) Structuring a loan transaction as an open-end credit plan for the purpose of**  
92 **evading the provisions of sections 408.740 to 408.810 when the loan would have been a**  
93 **covered loan if the loan had been structured as a closed-end loan;**

94           **(2) Dividing any loan transaction into separate parts for the purpose of evading the**  
95 **provisions of sections 408.740 to 408.810.**

96           **18. A person who originates a covered loan shall not act in any manner, whether**  
97 **specifically prohibited by this section or of a different character, that constitutes fraud.**

**408.770. 1. A covered loan shall not be made unless the following disclosure,**  
2 **written in 12-point type or larger, has been provided to the consumer no later than three**  
3 **business days prior to signing of the loan documents of the transaction:**

4           **"CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE**

5           **If you obtain this loan, the lender will have a mortgage on your home. You could**  
6 **lose your home, and any money you have put into it, if you do not meet your obligations**  
7 **under the loan.**

8           **Mortgage loan rates and closing costs and fees vary based on many other factors,**  
9 **including your particular credit and financial circumstances, your earnings history, the**  
10 **loan-to-value requested, and the type of property that will secure your loan. Higher rates**  
11 **and fees may be justified depending on the individual circumstances of a particular**  
12 **consumer's application. You should shop around and compare loan rates and fees.**

13           **This particular loan may have a higher rate and total points and fees than other**  
14 **mortgage loans and is, or may be, subject to the additional disclosure and substantive**  
15 **protections under the laws of Missouri. You should consider consulting a qualified**  
16 **independent credit counselor or other experienced financial adviser regarding the rate,**  
17 **fees, and provisions of this mortgage loan before you proceed. For information on**  
18 **contacting a qualified credit counselor, ask your lender or call the United States**  
19 **Department of Housing and Urban Development's counseling hot line at 1-888-466-3487**  
20 **or go to [www.hud.gov/fha/sfh/hcc](http://www.hud.gov/fha/sfh/hcc) for a list of counselors.**

21           **You are not required to complete any loan agreement merely because you have**  
22 **received these disclosures or have signed a loan application.**

23           **If you proceed with this mortgage loan, you should also remember that you may**  
24 **face serious financial risks if you use this loan to pay off credit card debts and other debts**  
25 **in connection with this transaction and then subsequently incur significant new credit card**  
26 **charges or other debts. If you continue to accumulate debt after this loan is closed and**  
27 **then experience financial difficulties, you could lose your home and any equity you have**  
28 **in it if you do not meet your mortgage loan obligations.**

29           **Property taxes and homeowner's insurance are your responsibility. Not all lenders**  
30 **provide escrow services for these payments. You should ask your lender about these**  
31 **services.**

32           **Your payments on existing debts contribute to your credit ratings. You should not**  
33 **accept any advice to ignore your regular payments to your existing creditors."**

34           **2. It shall be a rebuttable presumption that a lender has met its obligation to**  
35 **provide the disclosure in subsection 1 of this section if the consumer provides the lender**  
36 **with a signed acknowledgment of receipt of a copy of the notice set forth in subsection 1**  
37 **of this section.**

**408.780. 1. A person who originates covered loans shall not make or arrange a**  
2 **covered loan unless at the time the loan is consummated the person reasonably believes the**  
3 **consumer, or consumers, when considered collectively in the case of multiple consumers,**  
4 **will be able to make the scheduled payments to repay the obligation based upon a**  
5 **consideration of their current and expected income, current obligations, employment**  
6 **status, and other financial resources, other than the consumer's equity in the dwelling that**  
7 **secures repayment of the loan. In the case of a covered loan that is structured to increase**  
8 **to a specific designated rate, stated as a number or formula, at a specific predetermined**  
9 **date not exceeding thirty-seven months from the date of application, this evaluation shall**  
10 **be based upon the fully indexed rate of the loan calculated at the time of application. The**  
11 **consumer shall be presumed to be able to make the scheduled payments to repay the**  
12 **obligation if, at the time the loan is consummated, the consumer's total monthly debts,**  
13 **including amounts owed under the loan, do not exceed fifty-five percent of the consumer's**  
14 **monthly gross income, as verified by the credit application, the consumer's financial**  
15 **statement, a credit report, financial information provided to the person originating the**  
16 **loan by or on behalf of the consumer, or any other reasonable means.**

17           **2. No presumption of inability to make the scheduled payments to repay the**  
18 **obligation shall arise solely from the fact that at the time the loan is consummated, the**  
19 **consumer's total monthly debts, including amounts owed under the loan, exceed fifty-five**

20 percent of the consumer's monthly gross income.

21           **3. For stated income loans, the reasonable belief requirement in subsection 1 of this**  
22 **section may be based on the income stated by the consumer, and other information in the**  
23 **possession of the person originating the loan after the solicitation of all information that**  
24 **the person customarily solicits in connection with loans of this type. A person shall not**  
25 **knowingly or willfully originate a covered loan as a stated income loan with the intent, or**  
26 **effect, of evading the provisions of sections 408.740 to 408.810.**

**408.790. 1. Any compliance failure that was not willful or intentional and resulted**  
2 **from a bona fide error, that occurred notwithstanding the maintenance of procedures**  
3 **reasonably adopted to avoid those errors, including, but not limited to, those involving**  
4 **clerical, calculation, computer malfunction and programming, and printing errors shall**  
5 **be corrected no later than forty-five days after receipt of the complaint or discovery of the**  
6 **error. A person who originates a covered loan shall not be administratively, civilly, or**  
7 **criminally liable for a bona fide error corrected pursuant to this section. An error in legal**  
8 **judgment is not a bona fide error under this section.**

9           **2. If a person who originates covered loans makes a loan where the person knew**  
10 **of and showed reckless disregard for a violation of sections 408.740 to 408.810 by a broker,**  
11 **the person and broker shall be jointly and severally liable for all damages awarded under**  
12 **sections 408.740 to 408.810 with respect to the broker's unlawful conduct. This section**  
13 **does not impose or transfer liability for a breach of the broker's fiduciary duty.**

**408.800. 1. A lender who violates any provision of section 408.760 or 408.780 shall,**  
2 **upon conviction, be subject to the following:**

3           **(1) For the first violation, a fine equal to the total loan amounts originated in**  
4 **violation of section 408.760 or 408.780, or up to one million dollars;**

5           **(2) For the second violation, a fine equal to twice the total loan amounts originated**  
6 **in violation of section 408.760 or 408.780, or up to five million dollars, or imprisonment in**  
7 **a county jail for up to six months, or both fine and imprisonment;**

8           **(3) For the third and subsequent violation, a fine equal to three times the loan**  
9 **amounts originated in violation of section 408.760 or 408.780, or up to ten million dollars,**  
10 **or imprisonment in the county jail for up to one year, or by both fine and imprisonment.**

11           **2. An action under this section shall be brought by the district attorney, and any**  
12 **penalty collected in an action shall be paid to the treasurer of the county in which the**  
13 **judgment was rendered. One-half of the penalty shall be allocated by the county to**  
14 **programs that educate consumers about avoiding predatory lending practices, community-**  
15 **based programs to provide low-cost alternatives to subprime credit and consumer**  
16 **complaint resolution services. The other half of the penalty may be allocated by the county**

17 for enforcement.

18           **3. Nothing in sections 408.740 to 408.810 limits the power of the state to punish any**  
19 **person for any conduct which constitutes a crime under any other statute.**

**408.810. Upon request, a person who originates a covered loan shall provide the**  
2 **obligor, at no cost, documentation regarding his or her loan that clearly demonstrates**  
3 **whether any loan is a covered loan. This documentation shall include, but shall not be**  
4 **limited to, full disclosure of the original principal balance, the annual percentage rate, and**  
5 **the total points and fees, as defined in section 408.740.**