

SECOND REGULAR SESSION

SENATE BILL NO. 694

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time January 9, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5157S.011

AN ACT

To repeal sections 408.500, 408.505, and 408.506, RSMo, and to enact in lieu thereof three new sections relating to unsecured loans of five hundred dollars or less, with penalty provisions.

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

Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 408.500,
3 408.505, and 408.506, to read as follows:

408.500. 1. Lenders, other than banks, trust companies, credit unions,
2 savings banks and savings and loan companies, in the business of making
3 unsecured loans of five hundred dollars or less shall obtain a license from the
4 director of the division of finance. An annual license fee of [three] **five** hundred
5 dollars per location shall be required. The license year shall commence on
6 January first each year and the license fee may be prorated for expired
7 months. The director may establish a biennial licensing arrangement but in no
8 case shall the fees be payable for more than one year at a time. The provisions
9 of this section shall not apply to pawnbroker loans, consumer credit loans as
10 authorized under chapter 367, nor to a check accepted and deposited or cashed
11 by the payee business on the same or the following business day. The disclosures
12 required by the federal Truth in Lending Act and regulation Z shall be provided
13 on any loan, renewal or extension made pursuant to this section and the loan,
14 renewal or extension documents shall be signed by the borrower.

15 2. Entities making loans pursuant to this section shall contract for and
16 receive simple interest and fees in accordance with sections 408.100 and
17 408.140. Any contract evidencing any fee or charge of any kind whatsoever,

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

18 except for bona fide clerical errors, in violation of this section shall be void. Any
19 person, firm or corporation who receives or imposes a fee or charge in violation
20 of this section shall be guilty of a class A misdemeanor.

21 3. Notwithstanding any other law to the contrary, cost of collection
22 expenses, **including any costs associated with return of checks**, which
23 include court costs and reasonable attorneys fees, awarded by the court in suit
24 to recover on a bad check or breach of contract shall not be considered as a fee or
25 charge for purposes of this section.

26 4. Lenders licensed pursuant to this section shall conspicuously post in
27 the lobby of the office, in at least fourteen-point bold type, the maximum annual
28 percentage rates **and the fee in terms of dollars charged per one hundred**
29 **dollars loaned** such licensee is currently charging and the statement:

30 NOTICE:

31 This lender offers short-term loans. Please read and understand the terms
32 of the loan agreement before signing.

33 5. The lender shall provide the borrower with a notice in substantially the
34 following form set forth in at least ten-point bold type, and receipt thereof shall
35 be acknowledged by signature of the borrower:

36 (1) This lender offers short-term loans. Please read and understand the
37 terms of the loan agreement before signing.

38 (2) You may cancel this loan without costs by returning the full principal
39 balance to the lender by the close of the lender's next full business day.

40 6. [The lender shall renew the loan upon the borrower's written request
41 and the payment of any interest and fees due at the time of such renewal;
42 however, upon the first renewal of the loan agreement, and each subsequent
43 renewal thereafter, the borrower shall reduce the principal amount of the loan by
44 not less than five percent of the original amount of the loan until such loan is
45 paid in full. However, no loan may be renewed more than six times.] **No lender**
46 **licensed under this section shall renew or extend a loan, except that a**
47 **lender may permit a consumer to use an extended payment plan as**
48 **provided in this subsection. A borrower may pay any outstanding**
49 **payday loan from any licensee by means of an extended payment plan**
50 **(EPP) containing, at a minimum, the following provisions:**

51 (1) **A borrower may not be eligible to enter into more than one**
52 **extended pay plan in any twelve-month period with an individual**
53 **lender;**

54 **(2) To enter into an extended payment plan with respect to a**
55 **payday loan, the borrower shall agree in a written and signed**
56 **document to repay the amount owed in four equal installments or less**
57 **over an aggregate term of sixty days or less. Interest shall not accrue**
58 **on the indebtedness during the term of the EPP. The borrower may**
59 **prepay an EPP in full at any time without penalty. If the borrower fails**
60 **to pay the amount owed under the EPP when due, then the licensee**
61 **may immediately accelerate the unpaid loan balance;**

62 **(3) If the borrower enters into an EPP, then the licensee may not**
63 **make a payday loan to the borrower until the borrower satisfies the**
64 **balance of the loan under the terms of the EPP in full;**

65 **(4) The licensee shall conspicuously post in the lobby of the**
66 **office, in at least fourteen-point bold type, a notice that the borrower**
67 **may participate in an EPP and the brochures are available at the**
68 **counter containing terms and conditions of the EPP program;**

69 **(5) A borrower must invoke the EPP by the close of business on**
70 **the day before the due date by returning to the office where he or she**
71 **obtained the loan or by using whatever method the borrower used**
72 **originally to obtain the loan. To invoke the EPP, a borrower shall sign**
73 **an amendment to the original agreement reflecting the new payment**
74 **schedule.**

75 7. When making or negotiating loans, a licensee shall consider the
76 financial ability of the borrower to reasonably repay the loan in the time and
77 manner specified in the loan contract. All records shall be retained at least two
78 years.

79 8. A licensee who ceases business pursuant to this section must notify the
80 director to request an examination of all records within ten business days prior
81 to cessation. All records must be retained at least two years.

82 9. A lender that offers an unsecured short-term loan under
83 sections 408.500 and 408.505 to Missouri residents through the internet
84 shall be licensed in Missouri and shall comply with the provisions of
85 section 408.500 and 408.505. This subsection shall not apply if such
86 compliance is preempted by federal law.

87 10. Lenders licensed under this section shall implement
88 procedures to inform consumers of the intended use of the short-term,
89 unsecured loans. These procedures shall include the placement of a
90 "Customer Notice" on all marketing materials, including all television,

91 **print, radio, and on-line advertising, direct mail, and in-store**
92 **promotional materials.**

93 11. Any lender licensed pursuant to this section who fails, refuses or
94 neglects to comply with the provisions of this section, or any laws relating to
95 consumer loans or commits any criminal act may have its license suspended or
96 revoked by the director of finance after a hearing before the director on an order
97 of the director to show cause why such order of suspension or revocation should
98 not be entered specifying the grounds therefor which shall be served on the
99 licensee at least ten days prior to the hearing.

100 [10.] 12. Whenever it shall appear to the director that any lender
101 licensed pursuant to this section is failing, refusing or neglecting to make a good
102 faith effort to comply with the provisions of this section, or any laws relating to
103 consumer loans, the director may issue an order to cease and desist which order
104 may be enforceable by a civil penalty of not more than one thousand dollars per
105 day for each day that the neglect, failure or refusal shall continue. The penalty
106 shall be assessed and collected by the director. In determining the amount of the
107 penalty, the director shall take into account the appropriateness of the penalty
108 with respect to the gravity of the violation, the history of previous violations, and
109 such other matters as justice may require.

408.505. 1. This section shall apply to:

2 (1) Unsecured loans made by lenders licensed or who should have been
3 licensed pursuant to section 408.500;

4 (2) Any person that the Missouri division of finance determines that has
5 entered into a transaction that, in substance, is a disguised loan; and

6 (3) Any person that the Missouri division of finance determines has
7 engaged in subterfuge for the purpose of avoiding the provisions of this section.

8 2. All loans made pursuant to this section and section 408.500, shall have
9 a minimum term of fourteen days and a maximum term of thirty-one days,
10 regardless of whether the loan is an original loan or renewed loan.

11 3. A lender may only charge simple interest and fees in accordance with
12 sections 408.100 and 408.140. No other charges of any nature shall be permitted
13 except as provided by this section, including any charges for cashing the loan
14 proceeds if they are given in check form. [However, no borrower shall be required
15 to pay a total amount of accumulated interest and fees in excess of seventy-five
16 percent of the initial loan amount on any single loan authorized pursuant to this
17 section for the entire term of that loan and all renewals authorized by section

18 408.500 and this section.]

19 4. A loan made pursuant to the provisions of section 408.500 and this
20 section shall be deemed completed [and shall not be considered a renewed loan]
21 when the lender presents the instrument for payment or the payee redeems the
22 instrument by paying the full amount of the instrument to the lender. Once the
23 payee has completed the loan, the payee may enter into a new loan with a lender.

24 5. Except as provided in subsection 3 of this section, no loan made
25 pursuant to this section shall be repaid by the proceeds of another loan made by
26 the same lender or any person or entity affiliated with the lender. A lender,
27 person or entity affiliated with the lender shall not have more than five hundred
28 dollars in loans made pursuant to section 408.500 and this section outstanding
29 to the same borrower at any one time. A lender complies with this subsection if:

30 (1) The consumer certifies in writing that the consumer does not have any
31 outstanding small loans with the lender which in the aggregate exceeds five
32 hundred dollars, and is not repaying the loan with the proceeds of another loan
33 made by the same lender; and

34 (2) The lender does not know, or have reason to believe, that the
35 consumer's written certification is false.

36 6. On a consumer loan transaction where cash is advanced in exchange
37 for a personal check, a return check charge may be charged in the amounts
38 provided by sections 408.653 and 408.654, as applicable.

39 7. No state or public employee or official, including a judge of any court
40 of this state, shall enforce the provisions of any contract for payment of money
41 subject to this section which violates the provisions of section 408.500 and this
42 section.

43 8. A person does not commit the crime of passing a bad check pursuant
44 to section 570.120 if at the time the payee accepts a check or similar sight order
45 for the payment of money, he or she does so with the understanding that the
46 payee will not present it for payment until later and the payee knows or has
47 reason to believe that there are insufficient funds on deposit with the drawee at
48 the time of acceptance. However, this section shall not apply if the person's
49 account on which the instrument was written was closed by the consumer before
50 the agreed-upon date of negotiation or the consumer has stopped payment on the
51 check.

52 9. A lender shall not use a device or agreement that would have the effect
53 of charging or collecting more fees, charges, or interest than allowed by this

54 section, including, but not limited to:

55 (1) Entering into a different type of transaction;

56 (2) Entering into a sales lease back arrangement;

57 (3) Catalog sales;

58 (4) Entering into any other transaction with the consumer that is
59 designed to evade the applicability of this section.

60 **10. A licensee shall not threaten, or cause to be instigated,**
61 **criminal proceedings against a borrower if a check given as security**
62 **for a loan is dishonored. In addition to any other remedies available**
63 **by law, a licensee that knowingly violates this prohibition shall pay the**
64 **affected borrower three times the amount of the dishonored**
65 **check. However, this section shall not apply if the person's account on**
66 **which the instrument was written was closed by the consumer before**
67 **the agreed-upon date of negotiation or the consumer has stopped**
68 **payment of the check.**

69 **11. In collecting or attempting to collect a loan made pursuant**
70 **to this section, a licensee shall comply with the restrictions and**
71 **prohibitions applicable to creditors contained in the Fair Debt**
72 **Collection Practices Act, 15 U.S.C. Section 1692 et seq., regarding**
73 **harassment or abuse, false or misleading misrepresentations, and**
74 **unfair practices in collections.**

75 **12. The provisions of this section shall only apply to entities subject to the**
76 **provisions of section 408.500 and this section.**

408.506. The division of finance shall report to the general assembly
2 beginning on January 1, 2003, and on the first day of January every [other] year
3 thereafter, the number of licenses issued by the director pursuant to section
4 408.500, the number of loans issued by said lenders, the average face value of
5 such loans, the average number of times said loans are renewed, the number of
6 said loans that are defaulted on an annual basis, and the number and nature of
7 complaints made to the director by customers on such licensees and the
8 disposition of such complaints. Such report shall also include the average
9 interest and fees charged and collected by lenders on such loans, and a
10 comparison of such with similar small loan lenders from adjoining states.

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