

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 694

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Offered February 18, 2014.

Senate Substitute adopted, February 19, 2014.

Taken up for Perfection February 19, 2014. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

5157S.02P

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Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed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,

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

50 containing, at a minimum, the following provisions:

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

53 (2) To enter into an EPP with respect to a loan under this
54 section, the borrower shall agree in a written and signed document to
55 repay the amount owed in four equal installments or less over an
56 aggregate term of sixty days or less if the borrower receives bi-monthly
57 paychecks, or an aggregate term of one hundred twenty days or less if
58 the borrower received monthly paychecks. Such installments shall
59 coincide with the dates the borrower expects to earn regular
60 income. Interest shall not accrue on the indebtedness during the term
61 of the EPP. The borrower may prepay an EPP in full at any time
62 without penalty. If the borrower fails to pay the amount owed under
63 the EPP when due, then the licensee may immediately accelerate the
64 unpaid loan balance;

65 (3) If the borrower enters into an EPP, then the licensee shall
66 not make a loan under this section to the borrower until the borrower
67 satisfies the balance of the loan under the terms of the EPP in full;

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

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

78 If a borrower fails to make full payment upon the expiration of the
79 original loan or upon expiration of the EPP, no lender shall charge any
80 additional fees or interest on the outstanding loan. A lender shall
81 comply with the provisions of subsection 11 of section 408.505 with
82 regard to collection practices on the loan.

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

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

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

95 10. **Lenders licensed under this section shall implement**
96 **procedures to inform consumers of the intended use of the short-term,**
97 **unsecured loans. These procedures shall include the placement of a**
98 **"Customer Notice" on all marketing materials, including all television,**
99 **print, radio, and on-line advertising, direct mail, and in-store**
100 **promotional materials.**

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

108 [10.] 12. Whenever it shall appear to the director that any lender
109 licensed pursuant to this section is failing, refusing or neglecting to make a good
110 faith effort to comply with the provisions of this section, or any laws relating to
111 consumer loans, the director may issue an order to cease and desist which order
112 may be enforceable by a civil penalty of not more than one thousand dollars per
113 day for each day that the neglect, failure or refusal shall continue. The penalty
114 shall be assessed and collected by the director. In determining the amount of the
115 penalty, the director shall take into account the appropriateness of the penalty
116 with respect to the gravity of the violation, the history of previous violations, and
117 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.

Unofficial ✓

Bill

Copy