

# HOUSE BILL NO. 2677

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DUGGER.

6608H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal section 408.512, RSMo, and to enact in lieu thereof eight new sections relating to traditional installment loans, with penalty provisions.

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

Section A. Section 408.512, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 408.515, 408.518, 408.521, 408.524, 408.527, 408.530, 408.533, and 408.536, to read as follows:

**408.515. For sections 408.515 to 408.536, the following terms mean:**

(1) "Director", the director of the division of finance or the director's deputies and examiners;

(2) "Fully amortized", a consumer's obligation that is scheduled to repay the principal and the scheduled interest in substantially equal multiple installments at fixed intervals;

(3) "Open-end credit," the same meaning as the term is defined under the federal Consumer Credit Protection Act, 82 Stat. 146, and regulations thereunder;

(4) "Principal", the same meaning as "amount financed" under the federal Truth in Lending Act, 15 U.S.C. Section 1601, et seq.;

(5) "Scheduled interest", the same meaning as "finance charge" under the federal Truth in Lending Act, 15 U.S.C. Section 1601, et seq.;

(6) "Traditional installment loan", a fixed-rate, fully-amortized, and closed-end extension of direct consumer loans. However, a transaction shall not be a traditional installment loan if:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (a) The transaction has a repayment term of less than one hundred eighty-one days  
17 and is secured by the borrower's motor vehicle or auto title;

18 (b) The transaction requires the repayment of the full amount of credit extended,  
19 all fees, and all charges within ninety-one days;

20 (c) The transaction's scheduled repayment plan consists of one or more  
21 interest-only payments or a payment that is at least ten percent greater than the average  
22 of all other scheduled payment amounts; or

23 (d) The transaction, at origination, requires the borrower to:

24 a. Agree to a preauthorized automatic withdrawal in the form of a bank draft or  
25 a preapproved automated clearing house or its equivalent;

26 b. Agree to an allotment or to defer presentment of one or more  
27 contemporaneously-dated or postdated checks; or

28 c. Repay the loan in full at the borrower's next payday or other recurring deposit  
29 cycle if the repayment is connected with a bank account;

30 (7) "Traditional installment loan lender", a licensee under sections 408.515 to  
31 408.536 whose direct consumer loans are limited to only traditional installment loans.

408.518. 1. A traditional installment loan lender shall obtain a license from the  
2 director. No traditional installment loan lender shall hold any other license to issue loans  
3 in the state. No parent or subsidiary of a traditional installment loan lender shall hold any  
4 other license to issue loans in this state. The director shall prescribe the form of the written  
5 application for the license. The director shall require an annual license fee of five hundred  
6 dollars per location. The license year shall commence on January first each year, and the  
7 license fee may be prorated for expired months. The director may establish a biennial  
8 licensing arrangement, but in no case shall the fees be payable for more than one year at  
9 a time.

10 2. Upon receipt and approval of an application for license, license fee, and, if  
11 required by the director, bond, the director shall issue to the lender a license that states the  
12 lender's name, lender's address, and that the lender is duly and properly registered to  
13 conduct the supervised business. The lender shall post this license in a conspicuous place  
14 at the place of business stated in the license. If the lender engages in the supervised  
15 business at more than one place of business, such lender shall obtain a separate license for  
16 each such place of business. No license shall be assignable or transferable, except that a  
17 licensed lender may obtain a change of address for the place of business. Each license shall  
18 remain in full force and effect until surrendered, revoked, suspended, or expired.

408.521. 1. A licensee shall keep accurate books and records of the supervised  
2 business.

3           **2. The director shall have full power and authority to, as reasonably necessary,**  
4 **investigate or examine the supervised business and the loans made in the supervised**  
5 **business for compliance with sections 408.515 to 408.536. The director shall also have full**  
6 **power and authority to investigate or examine any person, firm, partnership, or**  
7 **corporation making loans who, the director believes on reasonable grounds, is violating**  
8 **sections 408.515 to 408.536 for the purpose of ascertaining whether such entity is in**  
9 **compliance with such sections. In any such investigation or examination, the director shall**  
10 **have free and immediate access to the licensee's place of business and its books and records**  
11 **and shall have the right and power to examine all persons under oath whom the director**  
12 **deems necessary. If a registered licensee is examined more than once a year or if any other**  
13 **lender is examined under this section at any time, such licensee or lender shall be charged**  
14 **the necessary costs and expenses thereof including, but not limited to, actual travel**  
15 **expenses.**

16           **3. The director may issue regulations providing for insurance products and motor**  
17 **club products which may be issued or sold in connection with traditional installment loans**  
18 **solely issued, sold, or contracted by traditional installment loan lenders.**

19           **4. The director may promulgate rules to implement the provisions of sections**  
20 **408.515 to 408.536. Any rule or portion of a rule, as that term is defined in section 536.010,**  
21 **that is created under the authority delegated in this section shall become effective only if**  
22 **it complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
23 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
24 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
25 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
26 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2016,**  
27 **shall be invalid and void.**

28           **5. The cost of any insurance shall not exceed the standard rates of the industry, and**  
29 **insurance shall be obtained from a duly authorized insurance company. Insurance**  
30 **premiums shall not be considered interest, service charges, or fees in connection to any**  
31 **loan. Nothing in this section shall alter or amend the statutes of this state relating to**  
32 **insurance or affect the powers of the director under statutes relating to credit life**  
33 **insurance and credit accident and health insurance.**

**408.524. 1. No charge, fee, or amount shall be directly or indirectly charged,**  
2 **contracted for, or received as incident to a traditional installment loan except under this**  
3 **section.**

4           **2. On any traditional installment loan, a traditional installment loan lender shall**  
5 **contract for and receive interest and fees on the unpaid principal balance at rates agreed**  
6 **to by the parties to the traditional installment loan.**

7           **3. The traditional installment loan lender may charge, on any traditional**  
8 **installment loan that is not open-end credit a fee that shall not exceed ten percent of the**  
9 **principal loaned or one hundred dollars. However, no such fee shall be charged on any**  
10 **extension, refinance, restructure, or renewal of such a loan, unless the application to**  
11 **extend, refinance, restructure, or renew the loan is investigated.**

12           **4. If the traditional installment loan contract so provides, a fee for late payment**  
13 **may be charged on each installment payment that is in default for no fewer than fifteen**  
14 **days in an amount not to exceed the greater of five percent of each installment due or**  
15 **fifteen dollars and never to exceed fifty dollars. If the installment payment in default is**  
16 **twenty-five dollars or less, the charge shall not exceed five dollars.**

17           **5. A traditional installment loan contract may provide for charges assessed by any**  
18 **institution for processing a refused instrument plus a handling fee not to exceed twenty-five**  
19 **dollars.**

20           **6. If the traditional installment loan contract, signed by the borrower, provides for**  
21 **attorney's fees, such attorney's fees shall not exceed fifteen percent of the amount due and**  
22 **payable under such contract or promissory note minus any assessed court costs.**  
23 **Attorney's fees shall only be applicable if the contract or promissory note is referred to an**  
24 **attorney for collection and is not handled by a salaried employee of the holder of the**  
25 **contract.**

**408.527. 1. If a traditional installment loan contract that provides for an amount**  
2 **of interest added to the principal of the loan is prepaid in full, by cash, renewal, or**  
3 **refinancing at least one month before the final installment date, the traditional installment**  
4 **loan lender shall recompute the amount of interest earned as of the date of prepayment in**  
5 **full with the basis of the originally contracted interest rate computed on the principal**  
6 **balances originally due during the time between the date of actual repayment and the**  
7 **originally contracted date of full repayment.**

8           **2. No refund shall be required for any partial prepayment.**

9           **3. For purposes of this section, the word "refund" means, for a traditional**  
10 **installment loan contract for more than five thousand dollars, a credit or deduction from**  
11 **the amount of originally contracted interest at any time by cash, renewal, or refinancing.**

12           **4. The borrower shall receive a refund that shall be calculated by the actuarial**  
13 **method. The traditional installment loan lender shall retain no more interest than is**  
14 **actually earned if the traditional installment loan contract is prepaid.**

**408.530. 1. An agreement of the parties regarding default of a traditional installment loan is enforceable only to the extent that:**

**(1) The borrower fails to make a payment as required by the agreement; or**

**(2) The traditional installment lender's prospect of payment, performance, or ability to realize upon the collateral is significantly impaired. The lender has the burden of evidencing significant impairment.**

**2. If the borrower defaults, the lender shall be entitled to recover no more than the amount that the borrower would be required to pay as prepayment of the obligation as of the date of final judgment and interest on that amount thereafter at a simple interest rate equivalent to the rate provided in the contract.**

**3. (1) If a borrower is in default for ten days for failing to make a required payment and has not voluntarily surrendered possession of collateral, a traditional installment loan lender may give notice as provided under this subsection to the borrower and all cosigners on the traditional installment loan transaction.**

**(2) Delivery to the borrower or cosigner in person or by United States Postal Service certified mail to the borrower's or cosigner's last known address shall satisfy the requirement of notice.**

**(3) Except as provided under subdivision (4) of this subsection, the notice shall be in writing and conspicuously state:**

**(a) The name, address, and telephone number of the traditional installment loan lender to whom payment is to be made;**

**(b) A brief identification of the credit transaction;**

**(c) The borrower's right to cure the default; and**

**(d) 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 traditional installment loan lender)**

**(account number, if any)**

**(brief identification of traditional installment loan transaction)**

**(amount) is the AMOUNT NOW DUE**

37 (date) is the LAST DAY FOR PAYMENT

38

39 You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by  
40 the LAST DAY FOR PAYMENT (above), you may continue with the contract as though  
41 you were not late. If you do not pay by that date, we may exercise our rights under the law.

42 (4) If a traditional installment loan is secured, the notice described in this section  
43 shall further state the following:

44

45 If you voluntarily surrender possession of the following specified collateral, you could still  
46 owe additional money if the money received from the sale of the collateral does not satisfy  
47 the total amount you owe.

48 4. (1) Except as provided under subdivision (3) of this subsection, if a default  
49 resulting only from the borrower failing to make a required payment occurs, a traditional  
50 installment loan lender, because of that default, shall neither accelerate the maturity of the  
51 unpaid balance nor take possession of or otherwise enforce a security interest until twenty  
52 days after the borrower and all cosigners receive notice under this subsection. Until such  
53 twenty-day period passes, the borrower or a cosigner may cure all such defaults by  
54 tendering the amount of all unpaid sums due at the time of the tender, without  
55 acceleration, plus any unpaid delinquency or deferral charges. Such cure restores the  
56 borrower's rights as if the default did not occur.

57 (2) This section does not prohibit a borrower from voluntarily surrendering  
58 possession of collateral property at any time after default, and the traditional installment  
59 loan lender may then accelerate maturity of the loan and enforce the note or loan and the  
60 lender's security interest in the property. If the traditional installment loan lender has not  
61 already given notice under subsection 3 of this section, the lender shall, upon voluntary  
62 surrender of collateral, notify the borrower either in person or by United States Postal  
63 Service certified mail at the borrower's last known address that the borrower may owe  
64 additional money if the money from the sale of the collateral does not satisfy the total  
65 amount owed.

66 (3) The provisions of subdivision (1) of this subsection shall not apply if the same  
67 borrower defaults on the same traditional installment loan with the same traditional  
68 installment loan lender twice, notwithstanding the cure of such defaults.

69 5. The provisions of sections 400.9-601 to 400.9-629 shall apply to all credit  
70 transactions with respect to any sale or other disposition of collateral for a credit  
71 transaction.

72           **6. (1) In any action brought by a traditional installment loan lender against a**  
73 **borrower arising from default, the petition shall allege the facts of the borrower's default,**  
74 **facts of the lender's compliance with the provisions of sections 400.9-601 to 400.9-629, facts**  
75 **of the amount to which the lender is entitled, and an indication of how that amount was**  
76 **determined.**

77           **(2) No default judgment shall be entered in favor of the traditional installment loan**  
78 **lender unless:**

79           **(a) The petition is verified by the traditional installment loan lender; or**

80           **(b) Sworn testimony, by affidavit or otherwise, is adduced showing that the**  
81 **traditional installment lender is entitled to the requested relief.**

82           **(3) If a traditional installment loan lender takes possession or voluntarily accepts**  
83 **surrender of goods in which the traditional installment loan lender possesses a purchase**  
84 **money security interest for a credit transaction and the principal amount is less than five**  
85 **hundred dollars, then the borrower shall not be liable to the traditional installment loan**  
86 **lender for the unpaid balance.**

87           **(4) Following any disposition of collateral pursuant to sections 400.9-601 to**  
88 **400.9-629, the traditional installment loan lender shall only be entitled to recover from the**  
89 **borrower the deficiency, if any, if the amount financed in the transaction was more than**  
90 **five hundred dollars and the amount remaining unpaid at the time of default is at least**  
91 **three hundred dollars.**

92           **7. If a traditional installment loan lender sells or otherwise disposes of collateral**  
93 **in a transaction in which an action for a deficiency may be commenced against the**  
94 **borrower, the traditional installment loan lender shall, prior to bringing any such action**  
95 **or upon written request of the borrower, give the borrower notice as provided under**  
96 **section 400.9-614 for consumer goods transactions or section 400.9-613 for all other**  
97 **transactions that are not consumer goods transactions.**

98           **8. If the amount financed is less than five hundred dollars, no security interest as**  
99 **security for a loan, other than a purchase money security interest, shall be taken or**  
100 **acquired in household furnishings, appliances, or clothing of the borrower or the**  
101 **borrower's dependents. Further, no security interest as security for a credit transaction**  
102 **shall be taken or acquired in goods if the principal amount is less than one hundred fifty**  
103 **dollars.**

104           **9. If the following provisions are contained in a traditional installment loan**  
105 **contract or in a contract of any guarantor of a traditional installment loan transaction,**  
106 **such provisions shall be void and unenforceable:**

107           **(1) A power of attorney to confess judgment;**

108           (2) An assignment of wages;  
109           (3) A waiver or limitation of any exemption given by law to the borrower that  
110 exempts the borrower's property from attachment or execution, except insofar as the  
111 waiver or limitation applies to property in which the lender has been granted a security  
112 interest to secure the credit transaction;

113           (d) A security interest in consumer goods that are identified only as a general class  
114 of goods such as "household goods" or "furniture"; and

115           (e) A waiver of any right of action against the traditional installment loan lender,  
116 its assignee, or other entity acting on behalf of the traditional installment loan lender in the  
117 collection of payments under the contract or in the repossession of goods.

118           10. In addition to any other civil remedy or penalty provided for by law, any person  
119 who suffers any loss of money or property as a result of any act, method, or practice in  
120 violation of the provisions of sections 408.515 to 408.536 may bring an action in the circuit  
121 court of the county in which any of the defendants reside, in which the plaintiff resides, or  
122 in which the contested transaction occurred to recover actual damages. The court may, in  
123 its discretion, award punitive damages, may award attorney's fees to the prevailing party  
124 in such action based on the amount of time reasonably expended, and may provide such  
125 equitable relief as it deems necessary and proper.

          408.533. 1. Any traditional installment loan lender licensed under this chapter shall  
2 be permitted to make loans and charge fees and interest as authorized under sections  
3 408.515 to 408.536.

4           2. No charter provision, ordinance, rule, order, permit, policy, guideline, or other  
5 governmental action of any political subdivision of the state, local government, city, county,  
6 or any agency, authority, board, commission, department, or officer thereof shall:

7           (1) Prevent, restrict, or discourage traditional installment loan lenders from lending  
8 under sections 408.515 to 408.536;

9           (2) Prevent, restrict, or discourage traditional installment loan lenders from  
10 operating in any location where any lender who makes loans payable in equal installments  
11 over a period of at least ninety days is permitted; or

12           (3) Create disincentives for any traditional installment loan lender from engaging  
13 in lending under sections 408.515 to 408.536.

14

15 The provisions of this subsection shall not apply to a jurisdiction where, as of August 28,  
16 2016, a charter provision or valid ordinance expressly applies to traditional installment  
17 loan lenders.

18           **3. Nothing in this section shall apply to or preempt any ordinance governing**  
19 **traditional installment loan lenders, or any amendment to any such ordinance, in a home**  
20 **rule city with more than four hundred thousand inhabitants and located in more than one**  
21 **county.**

**408.536. 1. A traditional installment loan lender licensee that fails, refuses, or**  
2 **neglects to comply with the provisions of sections 408.515 to 408.536 or any laws relating**  
3 **to consumer loans applicable to traditional installment loan lenders or that commits any**  
4 **criminal act may have its license suspended or revoked by the director of finance after a**  
5 **hearing before the director on an order of the director to show cause why such order of**  
6 **suspension or revocation should not be entered. Such order shall specify the grounds**  
7 **therefor and shall be served on the licensee at least ten days prior to the hearing.**

8           **2. If the director believes on reasonable grounds that any traditional installment**  
9 **loan lender licensed under this chapter is failing, refusing, or neglecting to make a good**  
10 **faith effort to comply with the provisions of this section or any laws relating to consumer**  
11 **loans applicable to traditional installment loan lenders, the director may issue an order to**  
12 **cease and desist. Such order may be enforceable by a civil penalty of not more than one**  
13 **thousand dollars per day for each day that the neglect, failure, or refusal shall continue.**  
14 **The penalty shall be assessed and collected by the director. In determining the amount of**  
15 **the penalty, the director shall take into account the appropriateness of the penalty with**  
16 **respect to the gravity of the violation, the history of previous violations, and such other**  
17 **matters as justice may require.**

18

          [408.512. 1. Any traditional installment loan lender licensed under  
2 sections 367.100 to 367.200 or section 408.510 shall be permitted to make loans  
3 and charge fees and interest as authorized under sections 408.100, 408.140, and  
4 408.170.

5           2. No charter provision, ordinance, rule, order, permit, policy, guideline,  
6 or other governmental action of any political subdivision of the state, local  
7 government, city, county, or any agency, authority, board, commission,  
8 department, or officer thereof shall:

9           (1) Prevent, restrict, or discourage traditional installment loan lenders  
10 from lending under sections 408.100, 408.140, and 408.170;

11           (2) Prevent, restrict, or discourage traditional installment loan lenders  
12 from operating in any location where any lender who makes loans payable in  
13 equal installments over more than ninety days is permitted; or

14           (3) Create disincentives for any traditional installment loan lender from  
15 engaging in lending under sections 408.100, 408.140, and 408.170.

16

17 The provisions of this subsection shall not apply where a charter provision or  
18 valid ordinance as of August 28, 2014, expressly applies to traditional installment  
19 loan lenders.

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

21 (1) "Fully amortized", the principal, defined as amount financed under  
22 the federal Truth in Lending Act, and the scheduled interest, defined as finance  
23 charge under the federal Truth in Lending Act, are repaid in substantially equal  
24 multiple installments at fixed intervals to fulfill the consumer's obligation;

25 (2) "Traditional installment loan", fixed rate, fully amortized closed-end  
26 extensions of direct consumer loans. However, if any of the following are true,  
27 the transaction is not a traditional installment loan:

28 (a) The transaction has a repayment term of one hundred eighty-one days  
29 or fewer and is secured by the title to the borrower's motor vehicle or auto;

30 (b) The transaction requires that the full amount of the credit extended  
31 together with all fees and charges for the credit be repaid in ninety-one days or  
32 fewer;

33 (c) The transaction's scheduled repayment plan contains one or more  
34 interest-only payments or a payment that is more than ten percent greater than the  
35 average of all other scheduled payment amounts;

36 (d) The transaction, at origination, requires the borrower:

37 a. To agree to a preauthorized automatic withdrawal in the form of a bank  
38 draft, a preapproved automated clearing house or its equivalent;

39 b. To agree to an allotment or an agreement to defer presentment of one  
40 or more contemporaneously-dated or postdated checks; or

41 c. To repay the loan in full at a borrower's next payday or other recurring  
42 deposit cycle, where the repayment is connected with a bank account;

43 (3) "Traditional installment loan lender", a licensee under sections  
44 367.100 to 367.200 or section 408.510 whose direct consumer loans are limited  
45 only to traditional installment loans.

46 4. Nothing in this section shall apply to or preempt any ordinance  
47 governing installment lenders, or any amendment to any such ordinance, in a  
48 home rule city with more than four hundred thousand inhabitants and located in  
49 more than one county.]

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