

SECOND REGULAR SESSION

# SENATE BILL NO. 542

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Pre-filed December 1, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

4213S.02I

## AN ACT

To amend chapter 436, RSMo, by adding thereto nine new sections relating to nonrecourse consumer legal lending, with penalty provisions.

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

Section A. Chapter 436, RSMo, is amended by adding thereto nine new sections, to be known as sections 436.550, 436.555, 436.560, 436.565, 436.570, 436.575, 436.580, 436.585, and 436.590, to read as follows:

**436.550. Sections 436.550 to 436.590 shall be known as the "Missouri Nonrecourse Consumer Legal Lending Act".**

**436.555. As used in sections 436.550 to 436.590, the following terms shall mean:**

(1) "Advertise", the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into a nonrecourse consumer legal lending transaction or contract with a consumer legal lending company;

(2) "Consumer", a person residing or domiciled in Missouri or who elects to enter into a transaction under sections 436.550 to 436.590, whether it be in person, over the internet, by facsimile, or by any other electronic means, and who has a pending legal claim and is represented by an attorney at the time he or she receives the nonrecourse consumer legal lending;

(3) "Consumer legal lending company", a person or entity that enters into a nonrecourse consumer legal lending transaction with a consumer;

(4) "Consumer legal lending contract" or "contract", a written agreement between a consumer and a consumer legal lending company that provides a consumer with nonrecourse civil legal lending. This

19 shall not include business lines of credit;

20 (5) "Department", the Missouri department of insurance, financial  
21 institutions and professional registration;

22 (6) "Director", the director of the Missouri department of  
23 insurance, financial institutions and professional registration;

24 (7) "Fees", the amount of money to be paid to the nonrecourse  
25 consumer legal lending company by or on behalf of the consumer, in  
26 addition to the principal amount of all proceeds provided to a  
27 consumer pursuant to sections 436.550 to 436.590. "Fees" include all  
28 administrative, origination, underwriting, or other charges no matter  
29 how denominated;

30 (8) "Legal claim", a civil claim or action;

31 (9) "Lending date", the date on which the loan amount is sent to  
32 the consumer by the consumer legal lending company;

33 (10) "Nonrecourse consumer legal lending", the provision of funds  
34 directly to a consumer by a consumer legal lending company in a  
35 nonrecourse consumer legal lending transaction;

36 (11) "Nonrecourse consumer legal lending transaction" or  
37 "transaction", a transaction in which a consumer legal lending company  
38 purchases and a consumer assigns, conveys, or otherwise confers to the  
39 consumer legal lending company the right to receive the potential  
40 proceeds, or a part thereof, of the consumer's legal claim to the  
41 consumer legal lending company out of the proceeds of any realized  
42 settlement, judgment, award, or verdict the consumer may receive in  
43 a legal claim;

44 (12) "Resolution date", the date the loan amount to the consumer  
45 plus the agreed upon fees from the legal claim are delivered to the  
46 consumer legal lending company.

436.560. 1. Each consumer legal lending contract shall include:

2 (1) Disclosures specified in this subsection, which shall  
3 constitute the material terms of the contract. All disclosures must be  
4 typed in at least twelve-point bold-faced font and be placed clearly and  
5 conspicuously within the contract as follows:

6 (a) On the front page, language specifying:

7 a. The total amount of funds to be paid to the consumer by the  
8 consumer legal lending company;

9 b. An itemization of one-time fees;

10 c. An itemization of nonrefundable fees;  
11 d. The total amount to be assigned by the consumer to the  
12 consumer legal lending company including all fees;

13 e. The total amount of the portion of proceeds the consumer legal  
14 lending company has a contingent right to receive from the consumer;

15 (b) Within the body of the contract, the following language in  
16 capitalized letters and twelve-point bold-type font: "IF THERE IS NO  
17 RECOVERY OF ANY DAMAGES FROM YOUR LEGAL CLAIM OR IF  
18 THERE IS NOT ENOUGH MONEY TO PAY THE CONSUMER LEGAL  
19 LENDING COMPANY BACK IN FULL, YOU WILL NOT OWE THE  
20 CONSUMER LEGAL LENDING COMPANY ANYTHING IN EXCESS OF  
21 YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS CONTRACT.";

22 (c) Immediately above the space that requires the consumer's  
23 signature, the following language in capitalized letters and twelve-point  
24 bold-faced font: "DO NOT SIGN THIS CONTRACT BEFORE YOU READ  
25 IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE  
26 ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS  
27 CONTRACT. BEFORE YOU SIGN THIS CONTRACT, YOU MAY OBTAIN  
28 THE ADVICE OF AN ATTORNEY.";

29 (2) A statement in type that is boldfaced, capitalized, underlined,  
30 and otherwise set out from surrounding written materials so as to be  
31 conspicuous, a notice as follows:

32 "CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL  
33 THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION  
34 WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE  
35 FUNDING FROM ..... (INSERT NAME OF CONSUMER LEGAL  
36 LENDING COMPANY). SEE THE NOTICE OF CANCELLATION FORM  
37 FOR AN EXPLANATION OF THIS RIGHT.";

38 (3) A notice of cancellation. The notice must be in boldfaced type  
39 and in the following form:

40 "NOTICE OF CANCELLATION

41 You may cancel this contract, without penalty or obligation,  
42 within five days after the date the contract is signed.

43 To cancel this contract, send by mail, or deliver in person, a  
44 signed and dated copy of this cancellation notice or other written  
45 notice to: ..... (name of consumer legal lending company)  
46 ..... (address)(place of business) not later than midnight on

47 ..... (date), unless there is evidence that the cancellation notice  
48 was postmarked by ..... (date).

49 I hereby cancel this transaction.

50 ..... (date)

51 ..... (consumer's signature)";

52 (4) The address of the consumer legal lending company's  
53 principal place of business and the name and address of its agent in the  
54 state authorized to receive service of process;

55 (5) An acknowledgment by the consumer that such consumer has  
56 reviewed the contract in its entirety;

57 (6) A space for containing the initials of the consumer on each  
58 page;

59 (7) A written acknowledgment by the attorney representing the  
60 consumer in the legal claim that states all of the following:

61 (a) The attorney representing the consumer in the legal claim is  
62 being paid on a contingency basis per a written fee agreement; and

63 (b) All proceeds of the legal claim will be disbursed through the  
64 trust account of the attorney representing the consumer in the legal  
65 claim or a settlement fund established to receive the proceeds of the  
66 legal claim from the defendant on behalf of the consumer; and

67 (c) The attorney representing the consumer in the legal claim is  
68 following the written instructions of the consumer with regard to the  
69 nonrecourse consumer legal lending transaction; and

70 (d) The attorney representing the consumer in the legal claim  
71 shall not be paid or offered to be paid commissions or referral fees  
72 from the consumer legal lending company; and

73 (e) The attorney representing the consumer in the legal claim  
74 does not have a financial interest in the consumer legal lending  
75 company.

76 2. The consumer may cancel the consumer legal lending contract  
77 without penalty or further obligation if, within five business days after  
78 the date the contract is signed, the consumer either:

79 (1) Returns to the consumer legal lending company the full  
80 amount of the disbursed funds by delivering the consumer legal lending  
81 company's uncashed check to the consumer legal lending company's  
82 office in person; or

83 (2) Mails, by insured, certified, or registered United States mail,

84 postmarked within five business days after the lending date of the  
85 transaction, to the address specified in the contract the notice of  
86 cancellation and includes the full amount of disbursed funds in the  
87 form of the consumer legal lending company's uncashed check or a  
88 certified check or money order.

89 3. The consumer legal lending company shall provide to the  
90 consumer a copy of the completed contract and all other documents the  
91 consumer legal lending company requires the consumer to sign at the  
92 time they are signed.

93 4. All nonrecourse consumer legal lending transactions shall  
94 accurately reflect the actual terms, conditions, fees, and repayment  
95 schedule.

96 5. Notwithstanding any provision of a consumer legal lending  
97 contract to the contrary, any party seeking relief from a consumer legal  
98 lending contract may bring suit in a court of competent jurisdiction.

436.565. 1. The contingent right to receive an amount of the  
2 potential proceeds of a legal claim is assignable by a consumer and that  
3 assignment is valid only for the purposes of entering into a  
4 nonrecourse consumer legal lending transaction with a consumer legal  
5 lending company.

6 2. Any attorney's lien, medicare lien, and valid health care  
7 provider lien arising from and attached to the consumer's legal claim  
8 shall take priority over any lien of the consumer legal lending  
9 company.

10 3. After the resolution date and once proceeds from a legal  
11 action are available to distribute, if insufficient proceeds remain to pay  
12 the consumer legal lending company, no consumer legal lending  
13 company shall report to any credit reporting agency.

436.570. Regarding total fees assigned by the consumer to the  
2 consumer legal lending company:

3 (1) A consumer legal lending company may charge an origination  
4 fee or delivery fee for processing a nonrecourse consumer legal lending  
5 application;

6 (2) A consumer legal lending company may not assess additional  
7 fees beyond any period exceeding one thousand ninety-five calendar  
8 days from the lending date with the consumer;

9 (3) Fees assessed by the consumer legal lending company may

10 compound semiannually but shall not compound based on any lesser  
11 time period;

12 (4) In calculating any fee to the consumer, a consumer legal  
13 lending company shall include all charges payable directly or indirectly  
14 by the consumer and shall compute the rate based on the loan amount  
15 actually received by a consumer from the consumer legal lending  
16 company.

436.575. 1. Licensed attorneys in this state are prohibited from  
2 having a direct financial interest in a consumer legal lending company  
3 that engages in nonrecourse consumer legal lending transactions with  
4 their own clients and from receiving referral fees or other forms of  
5 direct compensation from a consumer legal lending company or agent  
6 thereof.

7 2. A consumer legal lending company or agent thereof shall not:

8 (1) Enter into a nonrecourse consumer legal lending transaction  
9 with a consumer unless the consumer acknowledges that the funds  
10 extended to the consumer are to be used for that consumer's personal  
11 living expenses and not to further a legal claim;

12 (2) Control, directly or indirectly, or participate in the conduct  
13 of, the legal claim that is related to a nonrecourse consumer legal  
14 lending transaction;

15 (3) Pay or offer to pay commissions, referral fees, rebates, or  
16 other forms of consideration for referring a consumer to a consumer  
17 legal lending company;

18 (4) Advertise false or misleading information regarding their  
19 products or services;

20 (5) Advertise information regarding nonrecourse consumer legal  
21 lending without a conspicuous itemized list of nonrefundable fees  
22 commonly charged for entering into a nonrecourse consumer legal  
23 lending transaction or contract with the company;

24 (6) Refer, in furtherance of an initial nonrecourse consumer legal  
25 lending transaction, a client or potential client to a specific attorney,  
26 law firm, or medical professional; provided, however, if a client needs  
27 legal representation, the consumer legal lending company may refer the  
28 client to a state or local bar association referral service;

29 (7) Fail to provide all complete agreements to the consumer;

30 (8) Require arbitration or cause the consumer to waive remedies

31 at law, except remedies available through class action;

32 (9) Knowingly provide consumer legal lending to a consumer who  
33 has previously assigned or sold a portion of the consumer's right to  
34 proceeds from their legal claim without first making payment to or  
35 purchasing a prior consumer legal lending company's entire funding  
36 amount and contract charges;

37 (10) Receive any right to, nor make any decisions with respect  
38 to, the conduct of the underlying legal claim or any settlement  
39 resolution thereof;

40 (11) Knowingly pay or offer to pay for a consumer's legal lending  
41 transaction, attorney fees, or litigation costs either during or after the  
42 resolution of the legal claim, directly or indirectly.

43 436.580. 1. Unless a consumer legal lending company has first  
44 registered pursuant to subsection 2 of this section, a consumer legal  
45 lending company shall not engage in the business of nonrecourse  
46 consumer legal lending.

47 2. A consumer legal lending company shall submit an application  
48 of registration annually, beginning June 1, 2015, accompanied by an  
49 application fee of two hundred dollars to the department. The fee shall  
50 be credited to the division of finance fund established in section  
51 361.170. On June 1, 2016, the director shall ascertain the total expenses  
52 for administering sections 436.550 to 436.590 and shall set the  
53 application fee at a rate to cover but not yield revenue greater than  
54 projected expenses for administering sections 436.550 to 436.590 for the  
55 ensuing year. An application filed under this subsection shall be a  
56 public record under chapter 610 and shall contain information that  
57 allows the department to make an evaluation of the character, fitness,  
58 and financial responsibility of the company such that they may  
59 determine that the company will be operated honestly or fairly within  
60 the purposes of sections 436.550 to 436.590. For purposes of  
61 determining a consumer legal lending company's character fitness and  
62 financial responsibility, the department may request that the company  
63 submit:

64 (1) A copy of the company's articles of incorporation, articles of  
65 organization, certificate of limited partnership, or other organizational  
66 documents;

67 (2) Proof of a surety bond or irrevocable letter of credit issued

26 and confirmed by a financial institution authorized by law to transact  
27 business in the state of Missouri that is equal to double the amount of  
28 the largest amount lent in the past calendar year, or fifty thousand  
29 dollars, whichever is greater;

30 (3) The number of nonrecourse consumer legal lending  
31 transactions conducted in the state of Missouri in the previous  
32 calendar year;

33 (4) The financial amount provided to consumers in the state of  
34 Missouri through nonrecourse consumer legal lending transactions;

35 (5) The financial amount recovered from consumers in the state  
36 of Missouri through nonrecourse consumer legal lending transactions;

37 (6) The number of outstanding nonrecourse consumer legal  
38 lending transactions in the state of Missouri;

39 (7) The financial amount and number of cases in which the  
40 realization of the consumer legal lending company was less than the  
41 contracted amount.

42 3. The department shall:

43 (1) By rule and regulation, establish procedures for registration  
44 and registration renewals;

45 (2) Suspend, revoke, or refuse to renew a certificate of  
46 registration for conduct violating sections 436.550 to 436.590.

47 4. The department shall, beginning January 1, 2017, prepare and  
48 submit an annual report to the general assembly on the status of  
49 nonrecourse consumer legal lending transactions in the state. The  
50 report shall include aggregate information reported by consumer legal  
51 lending companies to the department, the cost of administering  
52 sections 436.550 to 436.590, and the current application fee charged to  
53 consumers.

436.585. The director shall promulgate reasonable regulations for  
2 the enforcement of section 436.580. Any rule or portion of a rule, as  
3 that term is defined in section 536.010 that is created under the  
4 authority delegated in section 436.580 shall become effective only if it  
5 complies with and is subject to all of the provisions of chapter 536, and,  
6 if applicable, section 536.028. This section and chapter 536 are  
7 nonseverable and if any of the powers vested with the general assembly  
8 pursuant to chapter 536, to review, to delay the effective date, or to  
9 disapprove and annul a rule are subsequently held unconstitutional,



10 then the grant of rulemaking authority and any rule proposed or  
11 adopted after August 28, 2014, shall be invalid and void.

436.590. Any person or nonrecourse consumer legal lending  
2 company, or agent thereof, who willfully and knowingly violates  
3 sections 436.550 to 436.590 shall be guilty of a class B misdemeanor for  
4 the first offense, a class A misdemeanor for the second offense, and a  
5 class D felony for all subsequent offenses.

✓

Unofficial

Bill

Copy