

SECOND REGULAR SESSION

# SENATE BILL NO. 811

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS KEAVENY AND SHOEMYER.

Read 1st time January 21, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4242S.011

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## AN ACT

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

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

Section A. Sections 408.500 and 408.505, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 408.500 and 408.505, to  
3 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 hundred dollars  
5 per location shall be required. The license year shall commence on January first  
6 each year and the license fee may be prorated for expired months. The director  
7 may establish a biennial licensing arrangement but in no case shall the fees be  
8 payable for more than one year at a time. The provisions of this section shall not  
9 apply to pawnbroker loans, consumer credit loans as authorized under chapter  
10 367, RSMo, nor to a check accepted and deposited or cashed by the payee  
11 business on the same or the following business day. The disclosures required by  
12 the federal Truth in Lending Act and regulation Z shall be provided on any loan,  
13 renewal or extension made pursuant to this section and the loan, renewal or  
14 extension documents shall be signed by the borrower.

15       2. **Subject to the limitations in subsection 3 of section 408.505,**  
16 entities making loans pursuant to this section shall contract for and receive

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

17 simple interest and fees in accordance with sections 408.100 and 408.140. Any  
18 contract evidencing any fee or charge of any kind whatsoever, except for bona fide  
19 clerical errors, in violation of this section shall be void. Any person, firm or  
20 corporation who receives or imposes a fee or charge in violation of this section  
21 shall be guilty of a class A misdemeanor.

22 3. Notwithstanding any other law to the contrary, cost of collection  
23 expenses, which include court costs and reasonable attorneys fees, awarded by the  
24 court in suit to recover on a bad check or breach of contract shall not be  
25 considered as a fee or 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 such licensee is currently charging and the statement:

29 NOTICE:

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

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

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

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

39 6. ~~[The]~~ **No** lender shall renew ~~[the]~~ **a** loan ~~[upon the borrower's written~~  
40 request and the payment of any interest and fees due at the time of such renewal;  
41 however, upon the first renewal of the loan agreement, and each subsequent  
42 renewal thereafter, the borrower shall reduce the principal amount of the loan by  
43 not less than five percent of the original amount of the loan until such loan is  
44 paid in full. However, no loan may be renewed more than six times] **made**  
45 **under this section and section 408.505, make a loan to a person if the**  
46 **loan would cause a person to have more than one unsecured loan of**  
47 **five hundred dollars or less, or make a loan to a borrower within one**  
48 **week of a borrower paying or otherwise satisfying in full a previous**  
49 **unsecured loan of five hundred dollars or less.**

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

53 years.

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

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

64 10. Whenever it shall appear to the director **or the attorney general**  
65 that any lender licensed pursuant to this section is failing, refusing or neglecting  
66 to make a good faith effort to comply with the provisions of this section **or**  
67 **section 408.505**, or any laws relating to consumer loans, the director **or the**  
68 **attorney general** may issue an order to cease and desist which order may be  
69 enforceable by a civil penalty of not more than one thousand dollars per day for  
70 each day that the neglect, failure or refusal shall continue. The penalty shall be  
71 assessed and collected by the director[. In determining the amount of the  
72 penalty, the director shall take into account the appropriateness of the penalty  
73 with respect to the gravity of the violation, the history of previous violations, and  
74 such other matters as justice may require] **or the attorney general on behalf**  
75 **of the director.**

76 11. **In addition to the remedies provided for in subsection 10 of**  
77 **this section, whenever it shall appear to the director or the attorney**  
78 **general that any lender making unsecured loans of five hundred dollars**  
79 **or less is failing, refusing, or neglecting to make a good faith effort to**  
80 **comply with the provisions of sections 408.500 to 408.506 or any laws**  
81 **relating to consumer loans, the attorney general may maintain an**  
82 **action in the circuit court of any county of the state or any city not**  
83 **within a county to enjoin the act, practice, or course of business and to**  
84 **enforce compliance with sections 408.500 to 408.506. In an action under**  
85 **this section and on a proper showing the court may:**

86 (1) **Issue a permanent or temporary injunction, restraining**  
87 **order, or declaratory judgment;**

88 (2) **Impose a civil penalty up to one thousand dollars per day for**

89 each day that the neglect, failure, or refusal continues;

90 (3) Impose an order of rescission, restitution, or disgorgement  
91 directed to a person or entity that has engaged in an act, practice, or  
92 course of business constituting a violation of sections 408.500 to 408.506  
93 or any laws relating to consumer loans;

94 (4) Order such other relief as the court deems appropriate.

408.505. 1. This section shall apply to:

2 (1) Unsecured loans of five hundred dollars or less made by lenders  
3 licensed or who should have been 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.] **A lender  
11 shall give a borrower a minimum of ninety days to repay a loan. A  
12 payment shall be required every two weeks so that the loan will fully  
13 amortize in ninety days.**

14 3. [A lender may only charge simple interest and fees in accordance with  
15 sections 408.100 and 408.140. No other charges of any nature shall be permitted  
16 except as provided by this section, including any charges for cashing the loan  
17 proceeds if they are given in check form. However, no borrower shall be required  
18 to pay a total amount of accumulated interest and fees in excess of seventy-five  
19 percent of the initial loan amount on any single loan authorized pursuant to this  
20 section for the entire term of that loan and all renewals authorized by section  
21 408.500 and this section.] **(1) A lender may charge and receive on each  
22 loan interest at a simple annual rate not to exceed thirty-six percent.**

23 **(2) A lender may charge a loan set-up fee equal to five percent  
24 of the loan up to a maximum of twenty-five dollars.**

25 **(3) No other charges of any nature shall be permitted except as  
26 provided by this section, including but not limited to late fees.**

27 4. [A loan made pursuant to the provisions of section 408.500 and this  
28 section shall be deemed completed and shall not be considered a renewed loan  
29 when the lender presents the instrument for payment or the payee redeems the  
30 instrument by paying the full amount of the instrument to the lender. Once the

31 payee has completed the loan, the payee may enter into a new loan with a lender.

32           5. Except as provided in subsection 3 of this section,] No loan made  
33 pursuant to this section shall be repaid by the proceeds of another loan made by  
34 the same lender or any person or entity affiliated with the lender. A lender,  
35 person or entity affiliated with the lender shall not have more than five hundred  
36 dollars in loans made pursuant to section 408.500 and this section outstanding  
37 to the same borrower at any one time. A lender complies with this subsection if:

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

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

44           [6.] 5. On a consumer loan transaction where cash is advanced in  
45 exchange for a personal check, a return check charge may be charged in the  
46 amounts provided by sections 408.653 and 408.654, as applicable.

47           [7.] 6. No state or public employee or official, including a judge of any  
48 court of this state, shall enforce the provisions of any contract for payment of  
49 money subject to this section which violates the provisions of section 408.500 and  
50 this section.

51           [8.] 7. A person does not commit the crime of passing a bad check  
52 pursuant to section 570.120, RSMo, if at the time the payee accepts a check or  
53 similar sight order for the payment of money, he or she does so with the  
54 understanding that the payee will not present it for payment until later and the  
55 payee knows or has reason to believe that there are insufficient funds on deposit  
56 with the drawee at the time of acceptance. However, this section shall not apply  
57 if the person's account on which the instrument was written was closed by the  
58 consumer before the agreed-upon date of negotiation or the consumer has stopped  
59 payment on the check.

60           [9.] 8. A lender shall not use a device or agreement that would have the  
61 effect of charging or collecting more fees, charges, or interest than allowed by this  
62 section, including, but not limited to:

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

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

65           (3) Catalog sales;

66           (4) Entering into any other transaction with the consumer that is

67 designed to evade the applicability of this section.

68 [10.] 9. The provisions of this section shall only apply to entities [subject  
69 to] **making unsecured loans of five hundred dollars or less under the**  
70 provisions of section 408.500 and this section.

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Unofficial

Bill

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