

FIRST REGULAR SESSION

SENATE BILL NO. 295

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time February 17, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0560S.021

AN ACT

To repeal sections 408.500 and 408.505, 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Section A. Sections 408.500 and 408.505, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 408.500, 408.505,
3 and 408.507, 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 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,**

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

16 entities making loans pursuant to this section shall contract for and receive
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. Each lender shall provide the following information to the**
55 **consumer at the time of signing the loan:**

56 **(1) The exact duration of the loan;**

57 **(2) The exact amount and date of payments due throughout the**
58 **duration of the loan; and**

59 **(3) The exact amount of interest and fees to be charged**
60 **throughout the duration of the loan.**

61 **9.** A licensee who ceases business pursuant to this section must notify the
62 director to request an examination of all records within ten business days prior
63 to cessation. All records must be retained at least two years.

64 **[9.] 10.** Any lender licensed pursuant to this section who fails, refuses or
65 neglects to comply with the provisions of this section, or any laws relating to
66 consumer loans or commits any criminal act may have its license suspended or
67 revoked by the director of finance after a hearing before the director on an order
68 of the director to show cause why such order of suspension or revocation should
69 not be entered specifying the grounds therefor which shall be served on the
70 licensee at least ten days prior to the hearing.

71 **[10.] 11.** Whenever it shall appear to the director **or the attorney**
72 **general** that any lender licensed pursuant to this section is failing, refusing or
73 neglecting to make a good faith effort to comply with the provisions of this section
74 **or section 408.505**, or any laws relating to consumer loans, the director **or the**
75 **attorney general** may issue an order to cease and desist which order may be
76 enforceable by a civil penalty of not more than one thousand dollars per day for
77 each day that the neglect, failure or refusal shall continue. The penalty shall be
78 assessed and collected by the director~~].~~ In determining the amount of the
79 penalty, the director shall take into account the appropriateness of the penalty
80 with respect to the gravity of the violation, the history of previous violations, and
81 such other matters as justice may require] **or the attorney general on behalf**
82 **of the director.**

83 **12. In addition to the remedies provided for in subsection 10 of**
84 **this section, whenever it shall appear to the director or the attorney**
85 **general that any lender making unsecured loans of five hundred dollars**
86 **or less is failing, refusing, or neglecting to make a good faith effort to**
87 **comply with the provisions of sections 408.500 to 408.506 or any laws**

88 relating to consumer loans, the attorney general may maintain an
89 action in the circuit court of any county of the state or any city not
90 within a county to enjoin the act, practice, or course of business and to
91 enforce compliance with sections 408.500 to 408.506. In an action under
92 this section and on a proper showing the court may:

93 (1) Issue a permanent or temporary injunction, restraining
94 order, or declaratory judgment;

95 (2) Impose a civil penalty up to one thousand dollars per day for
96 each day that the neglect, failure, or refusal continues;

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

101 (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.

22 4. [A loan made pursuant to the provisions of section 408.500 and this

23 section shall be deemed completed and shall not be considered a renewed loan
24 when the lender presents the instrument for payment or the payee redeems the
25 instrument by paying the full amount of the instrument to the lender. Once the
26 payee has completed the loan, the payee may enter into a new loan with a lender.

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

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

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

39 [6.] 5. On a consumer loan transaction where cash is advanced in
40 exchange for a personal check, a return check charge may be charged in the
41 amounts provided by sections 408.653 and 408.654, as applicable.

42 [7.] 6. No state or public employee or official, including a judge of any
43 court of this state, shall enforce the provisions of any contract for payment of
44 money subject to this section which violates the provisions of section 408.500 and
45 this section.

46 [8.] 7. A person does not commit the crime of passing a bad check
47 pursuant to section 570.120, RSMo, if at the time the payee accepts a check or
48 similar sight order for the payment of money, he or she does so with the
49 understanding that the payee will not present it for payment until later and the
50 payee knows or has reason to believe that there are insufficient funds on deposit
51 with the drawee at the time of acceptance. However, this section shall not apply
52 if the person's account on which the instrument was written was closed by the
53 consumer before the agreed-upon date of negotiation or the consumer has stopped
54 payment on the check.

55 [9.] 8. A lender shall not use a device or agreement that would have the
56 effect of charging or collecting more fees, charges, or interest than allowed by this
57 section, including, but not limited to:

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

59 (2) Entering into a sales lease back arrangement;
60 (3) Catalog sales;
61 (4) Entering into any other transaction with the consumer that is
62 designed to evade the applicability of this section.

63 **9. The sole and exclusive remedy for lenders under section**
64 **408.500 and section 408.505 against a consumer who makes, utters,**
65 **draws, or delivers any check, draft, or order for the payment of money**
66 **in connection with an unsecured loan of five hundred dollars or less**
67 **which is not honored, shall be a breach of contract claim. In such**
68 **instance, lenders shall be barred from bringing a civil action under**
69 **section 570.123.**

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

408.507. 1. There is hereby established a pilot program within
2 **the division of finance within the department of insurance, financial**
3 **institutions and professional registration which shall be administered**
4 **by the division to develop a real-time statewide compliance system for**
5 **payday lenders licensed under section 408.500 to record each payday**
6 **loan transaction.**

7 **2. The division shall be charged with the following:**

8 **(1) Adopting rules governing the creation, structure, and use of**
9 **the compliance system which shall include a real-time customer**
10 **eligibility verification charge as necessary to maintain the system;**

11 **(2) Establishing requirements for the retention, archiving and**
12 **purging of information entered into and stored by the system;**

13 **(3) Fully implementing the system by September 1, 2011; and**

14 **(4) Issuing a preliminary report to the general assembly by**
15 **March 1, 2012, and a final report by June 1, 2012, documenting the**
16 **usefulness of the system and the general compliance of licensees.**

17 **3. Any rule or portion of a rule, as that term is defined in section**
18 **536.010 that is created under the authority delegated in this section**
19 **shall become effective only if it complies with and is subject to all of**
20 **the provisions of chapter 536, and, if applicable, section 536.028. This**
21 **section and chapter 536 are nonseverable and if any of the powers**
22 **vested with the general assembly pursuant to chapter 536, to review, to**
23 **delay the effective date, or to disapprove and annul a rule are**

24 subsequently held unconstitutional, then the grant of rulemaking
25 authority and any rule proposed or adopted after August 28, 2011, shall
26 be invalid and void.

27 4. The provisions of this program authorized under this section
28 shall sunset on August 31, 2012.

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Unofficial

Bill

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