SENATE BILL NO. 295

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

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

TERRY L. SPIELER, Secretary.

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Section A. Sections 408.500 and 408.505, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 408.500, 408.505, and 408.507, to read as follows:

408.500. 1. Lenders, other than banks, trust companies, credit unions, savings banks and savings and loan companies, in the business of making unsecured loans of five hundred dollars or less shall obtain a license from the director of the division of finance. An annual license fee of three hundred dollars per location shall be required. The license year shall commence on January first each year and the license fee may be prorated for expired months. The director may establish a biennial licensing arrangement but in no case shall the fees be payable for more than one year at a time. The provisions of this section shall not apply to pawnbroker loans, consumer credit loans as authorized under chapter 367, RSMo, nor to a check accepted and deposited or cashed by the payee business on the same or the following business day. The disclosures required by the federal Truth in Lending Act and regulation Z shall be provided on any loan[., renewal or extension] made pursuant to this section and the loan[. renewal or extension] documents shall be signed by the borrower.

2. Subject to the limitations in subsection 3 of section 408.505,
entities making loans pursuant to this section shall contract for and receive
simple interest and fees in accordance with sections 408.100 and 408.140. Any
contract evidencing any fee or charge of any kind whatsoever, except for bona fide
clerical errors, in violation of this section shall be void. Any person, firm or
corporation who receives or imposes a fee or charge in violation of this section
shall be guilty of a class A misdemeanor.

3. Notwithstanding any other law to the contrary, cost of collection
expenses, which include court costs and reasonable attorneys fees, awarded by the
court in suit to recover on a [bad check or] breach of contract shall not be
considered as a fee or charge for purposes of this section.

4. Lenders licensed pursuant to this section shall conspicuously post in
the lobby of the office, in at least fourteen-point bold type, the maximum annual
percentage rates such licensee is currently charging and the statement:

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

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

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

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

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

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

8. Each lender shall provide the following information to the consumer at the time of signing the loan:
   (1) The exact duration of the loan;
   (2) The exact amount and date of payments due throughout the duration of the loan; and
   (3) The exact amount of interest and fees to be charged throughout the duration of the loan.

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

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

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

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

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

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

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

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

408.505. 1. This section shall apply to:

(1) Unsecured loans of five hundred dollars or less made by lenders
licensed or who should have been licensed pursuant to section 408.500;

(2) Any person that the Missouri division of finance determines that has
entered into a transaction that, in substance, is a disguised loan; and

(3) Any person that the Missouri division of finance determines has
engaged in subterfuge for the purpose of avoiding the provisions of this section.

2. [All loans made pursuant to this section and section 408.500, shall have
a minimum term of fourteen days and a maximum term of thirty-one days,
regardless of whether the loan is an original loan or renewed loan.] A lender
shall give a borrower a minimum of ninety days to repay a loan. A
payment shall be required every two weeks so that the loan will fully
amortize in ninety days.

3. A lender may only charge simple interest and fees in accordance with
sections 408.100 and 408.140. No other charges of any nature shall be permitted
except as provided by this section, including any charges for cashing the loan
proceeds if they are given in check form. However, no borrower shall be required
to pay a total amount of accumulated interest and fees in excess of seventy-five
percent of the initial loan amount on any single loan authorized pursuant to this
section for the entire term of that loan [and all renewals] authorized by section
408.500 and this section.

4. [A loan made pursuant to the provisions of section 408.500 and this
section shall be deemed completed and shall not be considered a renewed loan
when the lender presents the instrument for payment or the payee redeems the
instrument by paying the full amount of the instrument to the lender. Once the
payee has completed the loan, the payee may enter into a new loan with a lender.

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

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

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

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

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

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

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

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

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

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

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

2. The division shall be charged with the following:
   (1) Adopting rules governing the creation, structure, and use of
   the compliance system which shall include a real-time customer
   eligibility verification charge as necessary to maintain the system;
   (2) Establishing requirements for the retention, archiving and
   purging of information entered into and stored by the system;
   (3) Fully implementing the system by September 1, 2011; and
   (4) Issuing a preliminary report to the general assembly by
   March 1, 2012, and a final report by June 1, 2012, documenting the
   usefulness of the system and the general compliance of licensees.

3. Any rule or portion of a rule, as that term is defined in section
536.010 that is created under the authority delegated in this section
shall become effective only if it complies with and is subject to all of
the provisions of chapter 536, and, if applicable, section 536.028. This
section and chapter 536 are nonseverable and if any of the powers
vested with the general assembly pursuant to chapter 536, to review, to
delay the effective date, or to disapprove and annul a rule are
subsequently held unconstitutional, then the grant of rulemaking
authority and any rule proposed or adopted after August 28, 2011, shall
be invalid and void.

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