SECOND REGULAR SESSION

SENATE BILL NO. 791

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time February 14, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

54378.02I

AN ACT

To repeal sections 367.509, 408.500, and 408.505, RSMo, and to enact in lieu thereof four new sections relating to small loans, with existing penalty provisions.

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

Section A. Sections 367.509, 408.500, and 408.505, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 361.650, 367.509, 408.500, and 408.505, to read as follows:

361.650. 1. There is hereby established within the division of finance, the "Small Loan Community Reinvestment Program", to be administered by the director of the division of finance. The program shall consist of grant awards made from funds contained in the small loan community reinvestment fund established in subsection 2 of this section, to be granted to not-for-profit organizations registered with the state which qualify for tax exempt status under Section 501(c)(3) or 501(c)(4) of the Internal Revenue code of 1986, as amended, that demonstrate a commitment to community reinvestment in educational tutoring and development, financial literacy, early childhood development, youth mentoring, and senior services. The grants shall be used to provide services within geographic areas containing the highest concentration of payday and title loan lenders in the state. Grants shall be dedicated solely to the services and programs within those areas as identified by the division.

2. There is hereby established in the state treasury, a special fund to be known as the "Small Loan Community Reinvestment Fund". The fund shall consist of all moneys received by the division of

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
finance as loan surcharges pursuant to subsection 6 of section 367.509 and subsection 9 of section 408.500. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, money in the fund shall be used solely for the administration of this section.

3. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

4. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

5. The director shall develop procedures to solicit and process grant applications and distribute grants from the fund and promulgate rules to effectively administer this section. 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, 2012, shall be invalid and void.

367.509. 1. A title loan license applicant must have and maintain capital of at least seventy-five thousand dollars at all times.

2. The license application shall be in writing, under oath and in the form prescribed by the director. The application shall contain the name of the applicant, date of formation if a business entity, the address of each title loan office operated or sought to be operated, the name and residential address of the owner, partners, directors, trustees and principal officers, and such other pertinent information as the director may require. A corporate surety bond in the principal sum of twenty thousand dollars per location shall accompany each license application. The bond shall be in a form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state in order to ensure the faithful performance of the obligations of the applicant and the applicant’s agents and subagents in
connection with title loan activities. An applicant or licensee may, in lieu of filing any bond required pursuant to this section, provide the director with an irrevocable letter of credit as defined in section 400.5-103 in the amount of twenty thousand dollars per location, issued by any bank, trust company, savings and loan or credit union operating in Missouri in a form acceptable to the director.

3. Every person applying for a title loan license shall pay one thousand dollars as an investigation fee. Applicants for additional title lending licenses shall pay one thousand dollars per additional location as an investigation fee. The lender shall, beginning with the first license renewal, pay annually to the director a fee of one thousand dollars for each licensed location.

4. Each license shall specify the location of the title loan office and shall be conspicuously displayed therein. Before any title lending office may relocate, the director shall approve such relocation by mailing the licensee a new license to that effect, without charge.

5. Upon the filing of the application, and the payment of the fee, by a person eligible to apply for a title loan license, the director shall issue a license to engage in the title loan business in accordance with sections 367.500 to 367.533. The licensing year shall commence on January first and end the following December thirty-first. 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. Each license shall be uniquely numbered and shall not be transferable or assignable.

6. Lenders licensed pursuant to this section shall annually remit a one dollar surcharge for every title loan made by such lender during the year, to the division of finance, to be placed in the small loan community reinvestment fund established under section 361.650.
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. Entities making loans pursuant to this section shall **not charge interest** but may contract for and receive [simple interest and] fees in accordance with [sections 408.100 and] **section 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. **At such time, all fees paid when you entered into this loan will be returned to you.**

6. [The lender shall renew the 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.] **No lender shall renew any unsecured loan of five hundred dollars or less. No lender shall make such a loan to a borrower if the loan would cause the**
borrower to have more than one unsecured loan of five hundred dollars or less, or make such a loan to a borrower within one business day of a borrower paying or otherwise satisfying in full, a previous loan.

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. 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. Lenders licensed pursuant to this section shall annually remit a one dollar surcharge for every unsecured loan of five hundred dollars or less made by such lender during the year, to the division of finance, to be placed in the small loan community reinvestment fund established under section 361.650.

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 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 any laws relating to consumer loans, the director 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.

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. For 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] the borrower shall have the choice of choosing a loan with a term of either thirty, sixty, or ninety days. Lenders shall not offer any loan of any other duration. The borrower shall be required to make two installment payments within each thirty-day period of the loan's duration.

3. A lender may only charge [simple interest and] fees in accordance with [sections 408.100 and] section 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.] However, if the borrower pays the loan in full prior to the end of the term of the loan, the original loan fee shall be reduced on a prorated basis and the portion of the fee representing the remainder of the term shall be returned to the borrower. The fee shall be prorated by assigning an equal dollar amount to each day of the term of the loan. All fees paid upon entering into the loan shall be returned to the borrower if the borrower returns the full principal balance to the lender by the close of the lender's next full business day.

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.] 5. 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.] 6. 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.] 7. A person does not commit the crime of passing a bad check pursuant to section 570.120 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.] 8. 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.

[10.] 9. The provisions of this section shall only apply to entities subject to the provisions of section 408.500 and this section.