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
shall not include business lines of credit;

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

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

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

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

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

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

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

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

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

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

(a) On the front page, language specifying:

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

b. An itemization of one-time fees;
c. An itemization of nonrefundable fees;
d. The total amount to be assigned by the consumer to the consumer legal lending company including all fees;
e. The total amount of the portion of proceeds the consumer legal lending company has a contingent right to receive from the consumer;

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

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

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

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

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

"NOTICE OF CANCELLATION
You may cancel this contract, without penalty or obligation, within five days after the date the contract is signed.

To cancel this contract, send by mail, or deliver in person, a signed and dated copy of this cancellation notice or other written notice to: ......................... (name of consumer legal lending company)

......................... (address)(place of business) not later than midnight on
............... (date), unless there is evidence that the cancellation notice
was postmarked by ............ (date).

I hereby cancel this transaction.

................. (date)

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

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

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

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

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

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

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

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

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

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

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

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

(2) Mails, by insured, certified, or registered United States mail,
postmarked within five business days after the lending date of the
transaction, to the address specified in the contract the notice of
cancellation and includes the full amount of disbursed funds in the
form of the consumer legal lending company's uncashed check or a
certified check or money order.

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

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

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

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

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

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

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

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

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

(3) Fees assessed by the consumer legal lending company may
compound semiannually but shall not compound based on any lesser
time period;

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

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

2. A consumer legal lending company or agent thereof shall not:
(1) Enter into a nonrecourse consumer legal lending transaction
with a consumer unless the consumer acknowledges that the funds
extended to the consumer are to be used for that consumer's personal
living expenses and not to further a legal claim;
(2) Control, directly or indirectly, or participate in the conduct
of, the legal claim that is related to a nonrecourse consumer legal
lending transaction;
(3) Pay or offer to pay commissions, referral fees, rebates, or
other forms of consideration for referring a consumer to a consumer
legal lending company;
(4) Advertise false or misleading information regarding their
products or services;
(5) Advertise information regarding nonrecourse consumer legal
lending without a conspicuous itemized list of nonrefundable fees
commonly charged for entering into a nonrecourse consumer legal
lending transaction or contract with the company;
(6) Refer, in furtherance of an initial nonrecourse consumer legal
lending transaction, a client or potential client to a specific attorney,
law firm, or medical professional; provided, however, if a client needs
legal representation, the consumer legal lending company may refer the
client to a state or local bar association referral service;
(7) Fail to provide all complete agreements to the consumer;
(8) Require arbitration or cause the consumer to waive remedies
at law, except remedies available through class action;

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

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

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

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

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

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

(2) Proof of a surety bond or irrevocable letter of credit issued
and confirmed by a financial institution authorized by law to transact business in the state of Missouri that is equal to double the amount of the largest amount lent in the past calendar year, or fifty thousand dollars, whichever is greater;

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

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

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

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

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

3. The department shall:

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

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

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

436.585. The director shall promulgate reasonable regulations for the enforcement of section 436.580. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in section 436.580 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, 2014, shall be invalid and void.

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