

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 694

AN ACT

To repeal sections 408.500, 408.505, and 408.506, 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:

1 Section A. Sections 408.500, 408.505, and 408.506, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 408.500, 408.505, and 408.506, to read as
4 follows:

5 408.500. 1. Lenders, other than banks, trust companies,
6 credit unions, savings banks and savings and loan companies, in
7 the business of making unsecured loans of five hundred dollars or
8 less shall obtain a license from the director of the division of
9 finance. An annual license fee of [three] five hundred dollars
10 per location shall be required. The license year shall commence
11 on January first each year and the license fee may be prorated
12 for expired months. The director may establish a biennial
13 licensing arrangement but in no case shall the fees be payable
14 for more than one year at a time. The provisions of this section
15 shall not apply to pawnbroker loans, consumer credit loans as
16 authorized under chapter 367, nor to a check accepted and
17 deposited or cashed by the payee business on the same or the
18 following business day. The disclosures required by the federal

1 Truth in Lending Act and regulation Z shall be provided on any
2 loan, renewal or extension made pursuant to this section and the
3 loan, renewal or extension documents shall be signed by the
4 borrower.

5 2. Entities making loans pursuant to this section shall
6 contract for and receive simple interest and fees in accordance
7 with sections 408.100 and 408.140. Any contract evidencing any
8 fee or charge of any kind whatsoever, except for bona fide
9 clerical errors, in violation of this section shall be void. Any
10 person, firm or corporation who receives or imposes a fee or
11 charge in violation of this section shall be guilty of a class A
12 misdemeanor.

13 3. Notwithstanding any other law to the contrary, cost of
14 collection expenses, including any costs associated with return
15 of checks, which include court costs and reasonable attorneys
16 fees, awarded by the court in suit to recover on a bad check or
17 breach of contract shall not be considered as a fee or charge for
18 purposes of this section.

19 4. Lenders licensed pursuant to this section shall
20 conspicuously post in the lobby of the office, in at least
21 fourteen-point bold type, the maximum annual percentage rates and
22 the fee in terms of dollars charged per one hundred dollars
23 loaned such licensee is currently charging and the statement:

24 NOTICE:

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

27 5. The lender shall provide the borrower with a notice in
28 substantially the following form set forth in at least ten-point

1 bold type, and receipt thereof shall be acknowledged by signature
2 of the borrower:

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

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

8 6. [The lender shall renew the loan upon the borrower's
9 written request and the payment of any interest and fees due at
10 the time of such renewal; however, upon the first renewal of the
11 loan agreement, and each subsequent renewal thereafter, the
12 borrower shall reduce the principal amount of the loan by not
13 less than five percent of the original amount of the loan until
14 such loan is paid in full. However, no loan may be renewed more
15 than six times.] No lender licensed under this section shall
16 renew or extend a loan, except that a lender shall permit a
17 consumer to use an extended payment plan (EPP) as provided in
18 this subsection. A borrower may pay any outstanding loan under
19 this section from any licensee by means of an EPP containing, at
20 a minimum, the following provisions:

21 (1) A borrower may not be eligible to enter into more than
22 one EPP in any twelve-month period with an individual lender;

23 (2) To enter into an EPP with respect to a loan under this
24 section, the borrower shall agree in a written and signed
25 document to repay the amount owed in four equal installments or
26 less over an aggregate term of sixty days or less if the borrower
27 receives bi-monthly paychecks, or an aggregate term of one
28 hundred twenty days or less if the borrower received monthly

1 paychecks. Such installments shall coincide with the dates the
2 borrower expects to earn regular income. Interest shall not
3 accrue on the indebtedness during the term of the EPP. The
4 borrower may prepay an EPP in full at any time without penalty.
5 If the borrower fails to pay the amount owed under the EPP when
6 due, then the licensee may immediately accelerate the unpaid loan
7 balance;

8 (3) If the borrower enters into an EPP, then the licensee
9 shall not make a loan under this section to the borrower until
10 the borrower satisfies the balance of the loan under the terms of
11 the EPP in full;

12 (4) The licensee shall conspicuously post in the lobby of
13 the office, in at least fourteen-point bold type, a notice that
14 the borrower may participate in an EPP and the brochures are
15 available at the counter containing terms and conditions of the
16 EPP program;

17 (5) A borrower shall invoke the EPP by the close of
18 business on the day before the due date by returning to the
19 office where he or she obtained the loan or by using whatever
20 method the borrower used originally to obtain the loan. To
21 invoke the EPP, a borrower shall sign an amendment to the
22 original agreement reflecting the new payment schedule.

23
24 If a borrower fails to make full payment upon the expiration of
25 the original loan or upon expiration of the EPP, no lender shall
26 charge any additional fees or interest on the outstanding loan.
27 A lender shall comply with the provisions of subsection 11 of
28 section 408.505 with regard to collection practices on the loan.

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

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

9 9. A lender that offers an unsecured short-term loan under
10 sections 408.500 and 408.505 to Missouri residents through the
11 internet shall be licensed in Missouri and shall comply with the
12 provisions of section 408.500 and 408.505. This subsection shall
13 not apply if such compliance is preempted by federal law.

14 10. Lenders licensed under this section shall implement
15 procedures to inform consumers of the intended use of the short-
16 term, unsecured loans. These procedures shall include the
17 placement of a "Customer Notice" on all marketing materials,
18 including all television, print, radio, and on-line advertising,
19 direct mail, and in-store promotional materials.

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

1 [10.] 12. Whenever it shall appear to the director that any
2 lender licensed pursuant to this section is failing, refusing or
3 neglecting to make a good faith effort to comply with the
4 provisions of this section, or any laws relating to consumer
5 loans, the director may issue an order to cease and desist which
6 order may be enforceable by a civil penalty of not more than one
7 thousand dollars per day for each day that the neglect, failure
8 or refusal shall continue. The penalty shall be assessed and
9 collected by the director. In determining the amount of the
10 penalty, the director shall take into account the appropriateness
11 of the penalty with respect to the gravity of the violation, the
12 history of previous violations, and such other matters as justice
13 may require.

14 408.505. 1. This section shall apply to:

15 (1) Unsecured loans made by lenders licensed or who should
16 have been licensed pursuant to section 408.500;

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

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

23 2. All loans made pursuant to this section and section
24 408.500, shall have a minimum term of fourteen days and a maximum
25 term of thirty-one days, regardless of whether the loan is an
26 original loan or renewed loan.

27 3. A lender may only charge simple interest and fees in
28 accordance with sections 408.100 and 408.140. No other charges

1 of any nature shall be permitted except as provided by this
2 section, including any charges for cashing the loan proceeds if
3 they are given in check form. [However, no borrower shall be
4 required to pay a total amount of accumulated interest and fees
5 in excess of seventy-five percent of the initial loan amount on
6 any single loan authorized pursuant to this section for the
7 entire term of that loan and all renewals authorized by section
8 408.500 and this section.]

9 4. A loan made pursuant to the provisions of section
10 408.500 and this section shall be deemed completed [and shall not
11 be considered a renewed loan] when the lender presents the
12 instrument for payment or the payee redeems the instrument by
13 paying the full amount of the instrument to the lender. Once the
14 payee has completed the loan, the payee may enter into a new loan
15 with a lender.

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

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

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

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

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

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

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

- 26 (1) Entering into a different type of transaction;
- 27 (2) Entering into a sales lease back arrangement;
- 28 (3) Catalog sales;

1 (4) Entering into any other transaction with the consumer
2 that is designed to evade the applicability of this section.

3 10. A licensee shall not threaten, or cause to be
4 instigated, criminal proceedings against a borrower if a check
5 given as security for a loan is dishonored. In addition to any
6 other remedies available by law, a licensee that knowingly
7 violates this prohibition shall pay the affected borrower three
8 times the amount of the dishonored check. However, this section
9 shall not apply if the person's account on which the instrument
10 was written was closed by the consumer before the agreed-upon
11 date of negotiation or the consumer has stopped payment of the
12 check.

13 11. In collecting or attempting to collect a loan made
14 pursuant to this section, a licensee shall comply with the
15 restrictions and prohibitions applicable to creditors contained
16 in the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692
17 et seq., regarding harassment or abuse, false or misleading
18 misrepresentations, and unfair practices in collections.

19 12. The provisions of this section shall only apply to
20 entities subject to the provisions of section 408.500 and this
21 section.

22 408.506. The division of finance shall report to the
23 general assembly beginning on January 1, 2003, and on the first
24 day of January every [other] year thereafter, the number of
25 licenses issued by the director pursuant to section 408.500, the
26 number of loans issued by said lenders, the average face value of
27 such loans, the average number of times said loans are renewed,
28 the number of said loans that are defaulted on an annual basis,

1 and the number and nature of complaints made to the director by
2 customers on such licensees and the disposition of such
3 complaints. Such report shall also include the average interest
4 and fees charged and collected by lenders on such loans, and a
5 comparison of such with similar small loan lenders from adjoining
6 states.