

SECOND REGULAR SESSION

SENATE BILL NO. 1135

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time March 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6646S.011

AN ACT

To repeal section 408.512, RSMo, and to enact in lieu thereof eight new sections relating to traditional installment loans, with penalty provisions.

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

Section A. Section 408.512, RSMo, is repealed and eight new sections enacted in lieu thereof, to be known as sections 408.515, 408.518, 408.521, 408.524, 408.527, 408.531, 408.534, and 408.537, to read as follows:

408.515. As used in sections 408.515 to 408.537, the following terms shall mean:

(1) "Commissioner", the commissioner of the division of finance within the department of insurance, financial institutions and professional registration;

(2) "Fully amortized", the principal, defined as amount financed under the Truth in Lending Act, 15 U.S.C. Chapter 41, and the scheduled interest, defined as finance charge under the Truth in Lending Act, 15 U.S.C. Chapter 41, are repaid in substantially equal multiple installments at fixed intervals to fulfill the consumer's obligation;

(3) "Supervised business", the location at which a traditional installment loan lender engages in the business of issuing traditional installment loans;

(4) "Traditional installment loan", fixed rate, fully amortized closed-end extensions of direct consumer loans. However, if any of the following are true, the transaction is not a traditional installment loan:

(a) The transaction has a repayment term of one hundred eighty-

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

19 one days or fewer and is secured by the title to the borrower's motor
20 vehicle or auto;

21 (b) The transaction requires that the full amount of the credit
22 extended together with all fees and charges for the credit be repaid in
23 ninety-one days or fewer;

24 (c) The scheduled repayment plan of the transaction contains
25 one or more interest-only payments or a payment that is more than ten
26 percent greater than the average of all other scheduled payment
27 amounts;

28 (d) The transaction, at origination, requires the borrower:

29 a. To agree to a preauthorized automatic withdrawal in the form
30 of a bank draft, a preapproved automated clearing house, or its
31 equivalent;

32 b. To agree to an allotment or an agreement to defer
33 presentment of one or more contemporaneously-dated or postdated
34 checks; or

35 c. To repay the loan in full at a borrower's next payday or other
36 recurring deposit cycle, where the repayment is connected with a bank
37 account;

38 (5) "Traditional installment loan lender", a licensee under
39 sections 408.515 to 408.537 whose direct consumer loans are limited
40 only to traditional installment loans.

408.518. 1. A traditional installment loan lender shall obtain a
2 license from the commissioner. A traditional installment loan lender
3 shall not hold any other license to issue loans in this state and no
4 parent or subsidiary of a traditional installment loan lender shall hold
5 any other license to issue loans in this state. Application for the license
6 shall be in writing in a form prescribed by the commissioner. An
7 annual license fee of five hundred dollars per lender location shall be
8 required. The license year shall commence on January first each year
9 and the license fee may be prorated for expired months. The
10 commissioner may establish a biennial licensing arrangement but in no
11 event shall the fees be payable for more than one year at a time.

12 2. Upon receipt of such fee and application for license, and
13 provided the bond, if required by the commissioner, has been filed, the
14 commissioner shall issue to the lender a license containing the lender's
15 name and address and reciting that such lender is registered to

16 **conduct the supervised business. The lender shall keep this license**
17 **posted in a conspicuous place at the place of business recited in the**
18 **license. Where the lender engages in the supervised business at or**
19 **from more than one office or place of business, such lender shall obtain**
20 **a separate license for each such office or place of business. Licenses**
21 **shall not be assignable or transferable except that the lender named in**
22 **any such license may obtain a change of address of the place of**
23 **business therein set forth. Each license shall remain in full force and**
24 **effect until surrendered, revoked, or suspended as herein provided.**

2 **408.521. 1. Every licensee shall keep books and records of the**
3 **supervised business.**

4 **2. The commissioner, his deputies, and examiners shall have full**
5 **power and authority at any time and as often as reasonably necessary**
6 **to investigate or examine the supervised business, affairs, and loans**
7 **made in the supervised business of any licensee and of every person,**
8 **firm, partnership, and corporation making loans who the commissioner**
9 **has reasonable grounds to believe is subject to and in violation of the**
10 **provisions of sections 408.515 to 408.537, for the purpose of ascertaining**
11 **whether or not the licensee, or such person, firm, partnership, or**
12 **corporation is complying with the provisions of sections 408.515 to**
13 **408.537. In connection with any such investigation or examination the**
14 **commissioner and his representatives shall have free and immediate**
15 **access to the licensee's place or places of business and the books and**
16 **records of such business. The director may further examine under oath**
17 **all persons whose testimony may be relative to the business of the**
18 **particular licensee. Whenever it is necessary to examine the business**
19 **of a licensee more than once a year or any other lender at any other**
20 **time, then the licensee shall be required to pay the necessary cost and**
21 **expenses thereof, including actual travel expenses.**

22 **3. The commissioner is authorized and empowered to make such**
23 **general regulations as may be necessary for the enforcement of sections**
24 **408.515 to 408.537 and may issue regulations providing for insurance**
25 **products and motor club products which may be issued or sold in**
26 **connection with traditional installment loans solely issued, sold, or**
27 **contracted by traditional installment loan lenders. The cost of any**
28 **insurance shall not exceed the standard rates and such insurance shall**
be obtained from an insurance company duly authorized to conduct

29 business in this state. Insurance premiums shall not be considered as
30 interest, service charges, or fees in connection with any loan. Each
31 such regulation shall be consistent with sections 408.515 to 408.537 and
32 shall reference the specific provisions of sections 408.515 to 408.537
33 which is to be enforced by it. Nothing in this section shall alter or
34 amend the statutes of this state relating to insurance or affect the
35 powers of the commissioner under statutes relating to credit life
36 insurance and credit accident and health insurance.

408.524. A traditional installment loan lender shall contract for
2 and receive interest and fees only as provided by this section and no
3 other charge or amount whatsoever shall be directly or indirectly
4 charged, contracted for, or received for interest, service charges of
5 other fees as an incident to a traditional installment loan:

6 (1) On any traditional installment loan, the traditional
7 installment loan lender may charge, contract for, and receive interest
8 on the unpaid principal balance at rates agreed to by the parties to the
9 traditional installment loan;

10 (2) Traditional installment loans which are other than "open-end
11 credit", as such term is defined in the Consumer Credit Protection Act,
12 15 U.S.C. Chapter 41, and the regulations thereunder, may have a fee
13 of ten percent of the principal amount of the loan, but in no event to
14 exceed one hundred dollars, whichever is greater; however, no such fee
15 shall be permitted on any extension, refinance, restructure, or renewal
16 of any such loan, unless an investigation is made on the application to
17 extend, refinance, restructure, or renew the loan;

18 (3) If the traditional installment loan contract so provides, a
19 charge may be required for late payment on each installment payment
20 in default for a period of not less than fifteen days in an amount not to
21 exceed five percent of each installment due or fifteen dollars,
22 whichever is greater, but in no event to exceed fifty dollars. If the
23 contract so provides, a charge may be provided for late payment on
24 each twenty-five dollars or less installment in default for a period of
25 not less than fifteen days, but such charge shall not exceed five dollars;

26 (4) A traditional installment loan contract may provide for
27 charges assessed by any institution for processing a refused instrument
28 plus a handling fee of not more than twenty-five dollars;

29 (5) If the traditional installment loan contract, signed by the

30 borrower, provides for attorney fees, and if it is necessary to bring suit,
31 such attorney fees may not exceed fifteen percent of the amount due
32 and payable under such contract or promissory note, together with any
33 court costs. The attorney fees shall only be applicable where the
34 contract or promissory note is referred for collection to an attorney,
35 and is not handled by a salaried employee of the holder of the contract.

408.527. 1. If a traditional installment loan contract providing
2 for an amount of interest, added to the principal of the loan, is prepaid
3 in full, by cash, renewal, or refinancing, one month or more before the
4 final installment date, the traditional installment loan lender shall
5 recompute the amount of interest earned to the date of prepayment in
6 full on the basis of the rate of interest originally contracted for
7 computed on the actual unpaid principal balances for the time actually
8 outstanding. However, no refund shall be required for any partial
9 prepayment.

10 2. For a traditional installment loan contract for more than five
11 thousand dollars, the word "refund" as used in this section shall mean
12 a credit or deduction from the amount of interest originally contracted
13 for at any time by cash, renewal, or refinancing, and the buyer shall
14 receive a refund which shall be calculated by the actuarial
15 method. The traditional installment loan lender shall retain no more
16 interest than is actually earned whenever a traditional installment loan
17 contract is prepaid.

408.531. Enforcement of a default in a traditional installment
2 loan is subject to the provisions of this section.

3 (1) An agreement of the parties to a traditional installment loan
4 is enforceable only to the extent that:

5 (a) The borrower fails to make a payment as required by
6 agreement; or

7 (b) The traditional installment lender's prospect of payment,
8 performance, or ability to realize upon the collateral is significantly
9 impaired. The burden of establishing significant impairment is on the
10 lender.

11 (2) Upon default the lender shall be entitled to recover no more
12 than the amount which the borrower would have been required to pay
13 upon prepayment of the obligation on the date of final judgment
14 together with interest thereafter at the simple interest equivalent of

15 the rate provided in the contract.

16 (3) (a) After a borrower has been in default for ten days for
17 failure to make a required payment and has not voluntarily
18 surrendered possession of the collateral, a traditional installment loan
19 lender may give the borrower and all cosigners on the traditional
20 installment loan transaction the notice described in paragraph (b) of
21 subdivision (3) of this section. For purposes of this section, "gives
22 notice" shall mean the delivery of the notice to a borrower or cosigner
23 or mails the notice to a borrower at his or her last known address.

24 (b) Except as provided in paragraph (c) of subdivision (3) of this
25 section, the notice shall be in writing and conspicuously state: the
26 name, address, and telephone number of the traditional installment
27 loan lender to whom payment is to be made, a brief identification of the
28 credit transaction, the borrower's right to cure the default, and the
29 amount of payment and date by which payment must be made to cure
30 the default. A notice in substantially the following form complies with
31 this subsection:

32 Name, address, and telephone number of traditional installment
33 loan lender;

34 Account number, if any;

35 Brief identification of traditional installment loan transaction;

36 "Amount" is the AMOUNT NOW DUE;

37 "Date" is the LAST DAY FOR PAYMENT;

38 You are late in making your payments. If you pay the AMOUNT
39 NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may
40 continue with the contract as though you were not late. If you do not
41 pay by that date, we may exercise our rights under the law.

42 (c) If a traditional installment loan is secured, the notice
43 described in this section shall further state the following:

44 "If you voluntarily surrender possession of the following specified
45 collateral, you could still owe additional money after the money
46 received from the sale of the collateral is deducted from the total
47 amount you owe."

48 (4) (a) Except as provided in paragraph (c) of subdivision (4) of
49 this section, after a default consisting only of the borrower's failure to
50 make a required payment, a traditional installment loan lender,
51 because of that default, may neither accelerate maturity of the unpaid

52 **balance nor take possession of or otherwise enforce a security interest**
53 **until twenty days after a notice of the borrower's right to cure is given**
54 **both to the borrower and to all cosigners on the traditional installment**
55 **loan transaction. Until expiration of the minimum applicable period**
56 **after the notice is given, the borrower or cosigner may cure all defaults**
57 **consisting of a failure to make the required payment by tendering the**
58 **amount of all unpaid sums due at the time of the tender, without**
59 **acceleration, plus any unpaid delinquency or deferral charges. Cure**
60 **restores the borrower to his rights as though the default had not**
61 **occurred.**

62 **(b) This section does not prohibit a borrower from voluntarily**
63 **surrendering possession of property which is collateral and the**
64 **traditional installment loan lender from thereafter accelerating**
65 **maturity of the loan and enforcing the note or loan and his security**
66 **interest in the property at any time after default. If the traditional**
67 **installment loan lender has not already given the notice described in**
68 **subdivision (3) of this section, he shall upon voluntary surrender of the**
69 **collateral notify the borrower either personally or by mail at the**
70 **borrower's last known address that he may owe additional money after**
71 **the money received from the sale of the collateral is deducted from the**
72 **total amount owed.**

73 **(c) No traditional installment loan lender is bound by the**
74 **provisions of paragraph (a) of subdivision (4) of this section if default**
75 **by the same borrower in connection with the same traditional**
76 **installment loan with the same traditional installment loan lender has**
77 **occurred twice notwithstanding the cure of such defaults.**

78 **(5) (a) In any action brought by a traditional installment loan**
79 **lender against a borrower arising from default, the petition shall allege**
80 **the facts of the borrower's default, facts sufficient to show compliance**
81 **with the provisions of sections 400.9-601 to 400.9-629, the amount to**
82 **which the lender is entitled, and an indication of how that amount was**
83 **determined.**

84 **(b) A default judgment may not be entered in the action in favor**
85 **of the traditional installment loan lender unless the petition is verified**
86 **by the traditional installment loan lender, or sworn testimony, by**
87 **affidavit or otherwise, is adduced showing that the traditional**
88 **installment lender is entitled to the relief demanded.**

89 (c) If a traditional installment loan lender takes possession or
90 voluntarily accepts surrender of goods in which the traditional
91 installment loan lender has a purchase money security interest to
92 secure a credit transaction in the principal amount of less than five
93 hundred dollars, the borrower is not liable to the traditional
94 installment loan lender for the unpaid balance.

95 (d) Following any disposition of collateral pursuant to the
96 provisions of sections 400.9-601 to 400.9-629, the traditional installment
97 loan lender shall be entitled to recover from the borrower the
98 deficiency, if any, only if the amount financed in the transaction was
99 more than five hundred dollars and the amount remaining unpaid at
100 the time of default is three hundred dollars or more.

101 (6) When a traditional installment loan lender sells or otherwise
102 disposes of collateral in a transaction in which an action for a
103 deficiency may be commenced against the borrower, prior to bringing
104 any such action or upon written request of the borrower, the
105 traditional installment loan lender shall give the borrower the notice
106 provided in section 410.9-614 for consumer goods transactions or
107 section 400.9-613 for all other transactions that are not consumer goods
108 transactions.

109 (7) No security interest, other than a purchase money security
110 interest, may be taken or acquired in household furnishings,
111 appliances, or clothing of the borrower or the borrower's dependents
112 as security for a loan if the amount financed is less than five hundred
113 dollars. Further, no security interest may be taken or acquired in
114 goods as security for a credit transaction in the principal amount of
115 less than one hundred fifty dollars.

116 (8) The following provisions, when contained in a traditional
117 installment loan contract or the contract of any guarantor of a
118 traditional installment loan transaction, shall be void and
119 unenforceable:

120 (a) A power of attorney to confess judgment;

121 (b) An assignment of wages;

122 (c) A waiver or limitation of any exemption given by law to the
123 borrower exempting the borrower's property from attachment or
124 execution, except insofar as the waiver or limitation applies to
125 property in which the lender has been granted a security interest to

126 secure the credit transaction;

127 (d) A security interest in consumer goods which are identified
128 only as a general class of goods, such as "household goods" or
129 "furniture"; and

130 (e) A waiver of any right of action against the traditional
131 installment loan lender or his assignee or other person acting on behalf
132 of the traditional installment loan lender in the collection of payments
133 under the contract or in the repossession of goods.

134 (9) In addition to any other civil remedies or penalties provided
135 for by law, any person who suffers any loss of money or property as a
136 result of any act, method, or practice in violation of the provisions of
137 sections 408.515 to 408.537 may bring an action in the circuit court of
138 the county in which any of the defendants reside, in which the plaintiff
139 resides, or in which the transaction complained of occurred to recover
140 actual damages. The court may, in its discretion, award punitive
141 damages and may award to the prevailing party in such action
142 attorney's fees, based on the amount of time reasonably expended, and
143 may provide such equitable relief as it deems necessary and proper.

408.534. 1. Any traditional installment loan lender licensed
2 under this chapter shall be permitted to make loans and charge fees
3 and interest as authorized under sections 408.515 to 408.537.

4 2. No charter provision, ordinance, rule, order, permit, policy,
5 guideline, or other governmental action of any political subdivision of
6 the state, local government, city, county, or any agency, authority,
7 board, commission, department, or officer thereof shall:

8 (1) Prevent, restrict, or discourage traditional installment loan
9 lenders from lending under sections 408.515 to 408.537.

10 (2) Prevent, restrict, or discourage traditional installment loan
11 lenders from operating in any location where any lender who makes
12 loans payable in equal installment, over more than ninety days is
13 permitted; or

14 (3) Create disincentives for any traditional installment loan
15 lender from engaging in lending under sections 408.515 to 408.537.

16 The provisions of this subsection shall not apply where a charter
17 provision or valid ordinance as of August 28, 2016, expressly applies to
18 traditional installment loan lenders.

19 3. Nothing in this section shall apply to or preempt any

20 ordinance governing traditional installment loan lenders, or any
21 amendment to any such ordinance, in a home rule city with more than
22 four hundred thousand inhabitants and located in more than one
23 county.

408.537. 1. A traditional installment loan lender licensee who
2 fails to comply with the provisions of sections 408.515 to 408.537, or any
3 laws relating to consumer loans applicable to traditional installment
4 loan lenders, or commits any criminal act may have its license
5 suspended or revoked by the commissioner of finance after a hearing
6 before the commissioner on an order of the commissioner to show cause
7 why such order of suspension or revocation should not be entered
8 specifying the grounds therefor which shall be served on the licensee
9 at least ten days prior to the hearing.

10 2. Whenever the commissioner determines that any traditional
11 installment loan lender is not in compliance with the provisions of
12 sections 400.515 to 400.537, or any laws relating to consumer loans
13 applicable to traditional installment loan lenders, the commissioner
14 may issue an order to cease and desist which may be enforceable by a
15 civil penalty of not more than one thousand dollars per day for each
16 day that non-compliance shall continue. Such penalty shall be assessed
17 and collected by the commissioner. In determining the amount of the
18 penalty, the commissioner shall take into account the appropriateness
19 of the penalty with respect to the gravity of the violation, the history
20 of previous violations, and such other matters as justice may require.

[408.512. 1. Any traditional installment loan lender
2 licensed under sections 367.100 to 367.200 or section 408.510 shall
3 be permitted to make loans and charge fees and interest as
4 authorized under sections 408.100, 408.140, and 408.170.

5 2. No charter provision, ordinance, rule, order, permit,
6 policy, guideline, or other governmental action of any political
7 subdivision of the state, local government, city, county, or any
8 agency, authority, board, commission, department, or officer thereof
9 shall:

10 (1) Prevent, restrict, or discourage traditional installment
11 loan lenders from lending under sections 408.100, 408.140, and
12 408.170;

13 (2) Prevent, restrict, or discourage traditional installment

14 loan lenders from operating in any location where any lender who
15 makes loans payable in equal installments over more than ninety
16 days is permitted; or

17 (3) Create disincentives for any traditional installment loan
18 lender from engaging in lending under sections 408.100, 408.140,
19 and 408.170.

20 The provisions of this subsection shall not apply where a charter
21 provision or valid ordinance as of August 28, 2014, expressly
22 applies to traditional installment loan lenders.

23 3. As used in this section, the following terms shall mean:

24 (1) "Fully amortized", the principal, defined as amount
25 financed under the federal Truth in Lending Act, and the scheduled
26 interest, defined as finance charge under the federal Truth in
27 Lending Act, are repaid in substantially equal multiple
28 installments at fixed intervals to fulfill the consumer's obligation;

29 (2) "Traditional installment loan", fixed rate, fully
30 amortized closed-end extensions of direct consumer
31 loans. However, if any of the following are true, the transaction is
32 not a traditional installment loan:

33 (a) The transaction has a repayment term of one hundred
34 eighty-one days or fewer and is secured by the title to the
35 borrower's motor vehicle or auto;

36 (b) The transaction requires that the full amount of the
37 credit extended together with all fees and charges for the credit be
38 repaid in ninety-one days or fewer;

39 (c) The transaction's scheduled repayment plan contains
40 one or more interest-only payments or a payment that is more than
41 ten percent greater than the average of all other scheduled
42 payment amounts;

43 (d) The transaction, at origination, requires the borrower:

44 a. To agree to a preauthorized automatic withdrawal in the
45 form of a bank draft, a preapproved automated clearing house or
46 its equivalent;

47 b. To agree to an allotment or an agreement to defer
48 presentment of one or more contemporaneously-dated or postdated
49 checks; or

50 c. To repay the loan in full at a borrower's next payday or
51 other recurring deposit cycle, where the repayment is connected
52 with a bank account;

53 (3) "Traditional installment loan lender", a licensee under
54 sections 367.100 to 367.200 or section 408.510 whose direct
55 consumer loans are limited only to traditional installment loans.

56 4. Nothing in this section shall apply to or preempt any
57 ordinance governing installment lenders, or any amendment to any
58 such ordinance, in a home rule city with more than four hundred
59 thousand inhabitants and located in more than one county.]

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