

SECOND REGULAR SESSION

# SENATE BILL NO. 738

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4719S.011

## AN ACT

To repeal sections 367.515, 408.100, 408.500, 408.505, and 408.510, and to enact in lieu thereof six new sections relating to consumer credit interest rates, with penalty provisions and a referendum clause.

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

Section A. Sections 367.515, 408.100, 408.500, 408.505, and 408.510, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 367.105, 367.515, 408.100, 408.500, 408.505, and 408.510, to read as follows:

**367.105. Any person making or offering a consumer credit loan shall contract for and receive interest and fees in accordance with sections 408.100, 408.140, and 408.170 and shall be subject to all provisions of sections 408.100, 408.140, and 408.170.**

367.515. A title lender shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140 **and shall be subject to all provisions of sections 408.100 and 408.140.**

408.100. 1. **It is the intent of the people of Missouri to prevent lenders, such as those who make what are commonly known as payday loans, car title loans, and installment loans, which have typically carried triple-digit interest rates as high as three hundred percent annually or higher, from charging excessive fees and interest rates that can lead families into a cycle of debt by:**

**(1) Reducing the annual percentage rate for payday, title, installment, and other high-cost consumer credit and small loans from triple-digit interest rates to thirty-six percent per year;**

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

10           **(2) Extending to veterans and others the same thirty-six percent**  
11 **rate limit in place for payday and title loans to active military families**  
12 **as enacted by the 109th United States Congress in 10 U.S.C. Section 987;**  
13 **and**

14           **(3) Preserving fair lending by prohibiting lenders from**  
15 **structuring other transactions to avoid the rate limit through**  
16 **subterfuge.**

17           **2.** This section shall apply to all loans which are not made as permitted  
18 by other laws of this state except that it shall not apply to loans which are  
19 secured by a lien on real estate, nonprocessed farm products, livestock, farm  
20 machinery or crops or to loans to corporations. On any loan subject to this  
21 section, any person, firm, or corporation may charge, contract for and receive  
22 interest on the unpaid principal balance at rates agreed to by the parties  
23 **provided that the interest, fees, and finance charges shall not exceed**  
24 **an annual percentage rate of thirty-six percent.**

25           **3.** A person shall not engage in any device or subterfuge  
26 **intended to evade the requirements of this chapter through any method**  
27 **including, but not limited to, mail, telephone, internet, or any**  
28 **electronic means, including:**

29           **(1) Offering, making, assisting a borrower to obtain, or brokering**  
30 **a loan at an annual percentage rate prohibited by this section, making**  
31 **loans disguised as personal property sales and leaseback transactions,**  
32 **or disguising loan proceeds as cash rebates for the pretextual**  
33 **installment sale of goods or services;**

34           **(2) Making, assisting a borrower to obtain, or brokering an offer**  
35 **of credit, or in whole or in part, from a third party, or acting as an**  
36 **agent for a third party, regardless of whether the third party is exempt**  
37 **from licensing or whether approval, acceptance, or ratification by the**  
38 **third party is necessary to create a legal obligation for the third party;**  
39 **or**

40           **(3) Charging any application fee for the provision of credit or**  
41 **any fee for participation in a credit plan, if such a fee is authorized**  
42 **under any applicable section of Missouri law, without including the**  
43 **fees in the calculation of the annual percentage rate of the credit in**  
44 **accordance with the allowable rate set forth in this section.**

408.500. 1. Lenders, other than banks, trust companies, credit unions,  
2 savings banks and savings and loan companies, in the business of making

3 unsecured loans of five hundred dollars or less, **commonly known as payday**  
4 **lenders**, shall obtain a license from the director of the division of finance. An  
5 annual license fee of five hundred dollars per location shall be required. The  
6 license year shall commence on January first each year and the license fee may  
7 be prorated for expired months. The director may establish a biennial licensing  
8 arrangement but in no case shall the fees be payable for more than one year at  
9 a time. The provisions of this section shall not apply to pawnbroker loans,  
10 consumer credit loans as authorized under chapter 367, nor to a check accepted  
11 and deposited or cashed by the payee business on the same or the following  
12 business day. The disclosures required by the federal Truth in Lending Act and  
13 regulation Z shall be provided on any loan, renewal or extension made pursuant  
14 to this section and the loan, renewal or extension documents shall be signed by  
15 the borrower.

16 2. Entities making loans pursuant to this section shall contract for and  
17 receive simple interest and fees in accordance with sections 408.100 and 408.140  
18 **and shall be subject to all provisions of sections 408.100 and**  
19 **408.140**. Any contract evidencing any fee or charge of any kind whatsoever,  
20 except for bona fide clerical errors, in violation of this section shall be void. Any  
21 person, firm or corporation who receives or imposes a fee or charge in violation  
22 of this section shall be guilty of a class A misdemeanor.

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

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

30 NOTICE:

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

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

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

38 (2) You may cancel this loan without costs by returning the full principal

39 balance to the lender by the close of the lender's next full business day.

40           6. The lender shall renew the loan upon the borrower's written request  
41 and the payment of any interest and fees due at the time of such renewal;  
42 however, upon the first renewal of the loan agreement, and each subsequent  
43 renewal thereafter, the borrower shall reduce the principal amount of the loan by  
44 not less than five percent of the original amount of the loan until such loan is  
45 paid in full. However, no loan may be renewed more than six times.

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

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

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

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

408.505. 1. This section shall apply to:

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

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

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

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

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

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

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

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

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

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

40 7. No state or public employee or official, including a judge of any court  
41 of this state, shall enforce the provisions of any contract for payment of money

42 subject to this section which violates the provisions of section 408.500 and this  
43 section.

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

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

56 (1) Entering into a different type of transaction;

57 (2) Entering into a sales lease back arrangement;

58 (3) Catalog sales;

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

61 10. The provisions of this section shall only apply to entities subject to the  
62 provisions of section 408.500 and this section.

408.510. Notwithstanding any other law to the contrary, the phrase  
2 "consumer installment loans" means secured or unsecured loans of any amount  
3 and payable in not less than four substantially equal installments over a period  
4 of not less than one hundred twenty days. The phrase "consumer installment  
5 lender" means a person licensed to make consumer installment loans. A  
6 consumer installment lender shall be licensed in the same manner and upon the  
7 same terms as a lender making consumer credit loans. Such consumer  
8 installment lenders shall contract for and receive interest and fees in accordance  
9 with sections 408.100, 408.140, and 408.170 **and shall be subject to all**  
10 **provisions of sections 408.100, 408.140, and 408.170.** Consumer installment  
11 lenders shall be subject to the provisions of sections 408.551 to 408.562.

Section B. This act is hereby submitted to the qualified voters of this state  
2 for approval or rejection at an election which is hereby ordered and which shall  
3 be held and conducted on the Tuesday immediately following the first Monday in  
4 November, 2018, or at a special election to be called by the governor for that

5 purpose, pursuant to the laws and constitutional provisions of this state  
6 applicable to general elections and the submission of referendum measures by  
7 initiative petition, and it shall become effective when approved by a majority of  
8 the votes cast thereon at such election and not otherwise.

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