

SECOND REGULAR SESSION

SENATE BILL NO. 699

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILSON.

Pre-filed December 3, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

3449S.02I

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:

Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed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

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

16 2. **Subject to the limitations in subsection 3 of section 408.505,**
17 entities making loans pursuant to this section shall contract for and receive

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

18 simple interest and fees in accordance with sections 408.100 and 408.140. Any
19 contract evidencing any fee or charge of any kind whatsoever, except for bona fide
20 clerical errors, in violation of this section shall be void. Any person, firm or
21 corporation who receives or imposes a fee or charge in violation of this section
22 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] **under this**
46 **section or section 408.505 more than twice or for a period exceeding the**
47 **original loan period.**

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

52 8. A licensee who ceases business pursuant to this section must notify the
53 director to request an examination of all records within ten business days prior

54 to cessation. All records must be retained at least two years.

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

62 10. Whenever it shall appear to the director **or the attorney general**
63 that any lender [licensed pursuant to this section] **making unsecured loans**
64 **of five hundred dollars or less** is failing, refusing or neglecting to make a
65 good faith effort to comply with the provisions of [this] section **408.505**, or any
66 laws relating to consumer loans, the director **or the attorney general** may
67 issue an order to cease and desist which order may be enforceable by a civil
68 penalty of not more than one thousand dollars per day for each day that the
69 neglect, failure or refusal shall continue. The penalty shall be assessed and
70 collected by the director[. In determining the amount of the penalty, the director
71 shall take into account the appropriateness of the penalty with respect to the
72 gravity of the violation, the history of previous violations, and such other matters
73 as justice may require] **or the attorney general on behalf of the director.**

74 11. **In addition to the remedies provided for in subsection 10 of**
75 **this section, whenever it shall appear to the director or the attorney**
76 **general that any lender making unsecured loans of five hundred dollars**
77 **or less is failing, refusing, or neglecting to make a good faith effort to**
78 **comply with the provisions of sections 408.500 to 408.506 or any laws**
79 **relating to consumer loans the attorney general may maintain an action**
80 **in the circuit court of any county of the state or any city not within a**
81 **county to enjoin the act, practice, or course of business and to enforce**
82 **compliance with sections 408.500 to 408.506. In an action under this**
83 **section and on a proper showing the court may:**

84 (1) **Issue a permanent or temporary injunction, restraining**
85 **order, or declaratory judgment;**

86 (2) **Impose a civil penalty up to one thousand dollars per day for**
87 **each day that the neglect, failure, or refusal continues;**

88 (3) **Impose an order of rescission, restitution, or disgorgement**
89 **directed to a person or entity that has engaged in an act, practice, or**

90 **course of business constituting a violation of sections 400.500 to 400.506**
91 **or any laws relating to consumer loans;**

92 **(4) Order such other relief as the court deems appropriate.**

408.505. 1. This section shall apply to:

2 (1) Unsecured loans **of five hundred dollars or less** made by lenders
3 **whether** licensed or [who should have been licensed] **not** pursuant to section
4 408.500;

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

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

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

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

21 (1) **Not more than fifteen dollars per one hundred dollars of**
22 **principal amount of the loan for the first thirty days of the loan and**
23 **each renewal; and**

24 (2) **Not more than three percent per month of the outstanding**
25 **loan balance for any loan continued or extended after the thirtieth day**
26 **after the original date of the loan whether made by the original lender**
27 **or offered, made, or arranged by any person or entity on behalf of the**
28 **original lender or any person or entity affiliated with the lender.**

29 **No other charges of any nature shall be permitted except as provided**
30 **by this section, including but not limited to any charges for cashing the**
31 **loan proceeds if they are given in check form.**

32 4. [A loan made pursuant to the provisions of section 408.500 and this
33 section shall be deemed completed and shall not be considered a renewed loan

34 when the lender presents the instrument for payment or the payee redeems the
35 instrument by paying the full amount of the instrument to the lender. Once the
36 payee has completed the loan, the payee may enter into a new loan with a lender.

37 5. Except as provided in subsection 3 of this section,] No loan made
38 pursuant to this section shall be repaid by the proceeds of another loan made by
39 the same lender or any person or entity affiliated with the lender. A lender,
40 person or entity affiliated with the lender shall not have more than five hundred
41 dollars in loans made pursuant to section 408.500 and this section outstanding
42 to the same borrower at any one time. A lender complies with this subsection if:

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

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

49 [6.] 5. On a consumer loan transaction where cash is advanced in
50 exchange for a personal check, a return check charge may be charged in the
51 amounts provided by sections 408.653 and 408.654, as applicable.

52 [7.] 6. No state or public employee or official, including a judge of any
53 court of this state, shall enforce the provisions of any contract for payment of
54 money subject to this section which violates the provisions of section 408.500 and
55 this section.

56 [8.] 7. A person does not commit the crime of passing a bad check
57 pursuant to section 570.120, RSMo, if at the time the payee accepts a check or
58 similar sight order for the payment of money, he or she does so with the
59 understanding that the payee will not present it for payment until later and the
60 payee knows or has reason to believe that there are insufficient funds on deposit
61 with the drawee at the time of acceptance. However, this section shall not apply
62 if the person's account on which the instrument was written was closed by the
63 consumer before the agreed-upon date of negotiation or the consumer has stopped
64 payment on the check.

65 [9.] 8. A lender shall not use a device or agreement that would have the
66 effect of charging or collecting more fees, charges, or interest than allowed by this
67 section, including, but not limited to:

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

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

70 (3) Catalog sales;

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

73 [10.] **9.** The provisions of this section shall [only] apply to entities
74 [subject to] **making unsecured loans of five hundred dollars or less**
75 **regardless of whether licensure is required under** the provisions of section
76 408.500 and this section.

408.506. The division of finance shall report to the general assembly
2 beginning on January 1, 2003, and on the first day of January every [other] year
3 thereafter, the number of licenses issued by the director pursuant to section
4 408.500, the number of loans issued by said lenders, the average face value of
5 such loans, the average number of times said loans are renewed, the number of
6 said loans that are defaulted on an annual basis, and the number and nature of
7 complaints made to the director by customers on such licensees and the
8 disposition of such complaints. Such report shall also include the average
9 interest and fees charged and collected by lenders on such loans, and a
10 comparison of such with similar small loan lenders from adjoining states.

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