

SECOND REGULAR SESSION

SENATE BILL NO. 791

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time February 14, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5437S.02I

AN ACT

To repeal sections 367.509, 408.500, and 408.505, RSMo, and to enact in lieu thereof four new sections relating to small loans, with existing penalty provisions.

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

Section A. Sections 367.509, 408.500, and 408.505, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 361.650,
3 367.509, 408.500, and 408.505, to read as follows:

361.650. 1. There is hereby established within the division of
2 **finance, the "Small Loan Community Reinvestment Program", to be**
3 **administered by the director of the division of finance. The program**
4 **shall consist of grant awards made from funds contained in the small**
5 **loan community reinvestment fund established in subsection 2 of this**
6 **section, to be granted to not-for-profit organizations registered with the**
7 **state which qualify for tax exempt status under Section 501(c)(3) or**
8 **501(c)(4) of the Internal Revenue code of 1986, as amended, that**
9 **demonstrate a commitment to community reinvestment in educational**
10 **tutoring and development, financial literacy, early childhood**
11 **development, youth mentoring, and senior services. The grants shall**
12 **be used to provide services within geographic areas containing the**
13 **highest concentration of payday and title loan lenders in the**
14 **state. Grants shall be dedicated solely to the services and programs**
15 **within those areas as identified by the division.**

16 **2. There is hereby established in the state treasury, a special**
17 **fund to be known as the "Small Loan Community Reinvestment**
18 **Fund". The fund shall consist of all moneys received by the division of**

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

19 **finance as loan surcharges pursuant to subsection 6 of section 367.509**
20 **and subsection 9 of section 408.500. The state treasurer shall be**
21 **custodian of the fund. In accordance with sections 30.170 and 30.180,**
22 **the state treasurer may approve disbursements. The fund shall be a**
23 **dedicated fund and, upon appropriation, money in the fund shall be**
24 **used solely for the administration of this section.**

25 **3. Notwithstanding the provisions of section 33.080 to the**
26 **contrary, any moneys remaining in the fund at the end of the biennium**
27 **shall not revert to the credit of the general revenue fund.**

28 **4. The state treasurer shall invest moneys in the fund in the**
29 **same manner as other funds are invested. Any interest and moneys**
30 **earned on such investments shall be credited to the fund.**

31 **5. The director shall develop procedures to solicit and process**
32 **grant applications and distribute grants from the fund and promulgate**
33 **rules to effectively administer this section. Any rule or portion of a**
34 **rule, as that term is defined in section 536.010 that is created under the**
35 **authority delegated in this section shall become effective only if it**
36 **complies with and is subject to all of the provisions of chapter 536, and,**
37 **if applicable, section 536.028. This section and chapter 536 are**
38 **nonseverable and if any of the powers vested with the general assembly**
39 **pursuant to chapter 536, to review, to delay the effective date, or to**
40 **disapprove and annul a rule are subsequently held unconstitutional,**
41 **then the grant of rulemaking authority and any rule proposed or**
42 **adopted after August 28, 2012, shall be invalid and void.**

367.509. 1. A title loan license applicant must have and maintain capital
2 of at least seventy-five thousand dollars at all times.

3 2. The license application shall be in writing, under oath and in the form
4 prescribed by the director. The application shall contain the name of the
5 applicant, date of formation if a business entity, the address of each title loan
6 office operated or sought to be operated, the name and residential address of the
7 owner, partners, directors, trustees and principal officers, and such other
8 pertinent information as the director may require. A corporate surety bond in the
9 principal sum of twenty thousand dollars per location shall accompany each
10 license application. The bond shall be in a form satisfactory to the director and
11 shall be issued by a bonding company or insurance company authorized to do
12 business in this state in order to ensure the faithful performance of the
13 obligations of the applicant and the applicant's agents and subagents in

14 connection with title loan activities. An applicant or licensee may, in lieu of filing
15 any bond required pursuant to this section, provide the director with an
16 irrevocable letter of credit as defined in section 400.5-103 in the amount of twenty
17 thousand dollars per location, issued by any bank, trust company, savings and
18 loan or credit union operating in Missouri in a form acceptable to the director.

19 3. Every person applying for a title loan license shall pay one thousand
20 dollars as an investigation fee. Applicants for additional title lending licenses
21 shall pay one thousand dollars per additional location as an investigation
22 fee. The lender shall, beginning with the first license renewal, pay annually to
23 the director a fee of one thousand dollars for each licensed location.

24 4. Each license shall specify the location of the title loan office and shall
25 be conspicuously displayed therein. Before any title lending office may relocate,
26 the director shall approve such relocation by mailing the licensee a new license
27 to that effect, without charge.

28 5. Upon the filing of the application, and the payment of the fee, by a
29 person eligible to apply for a title loan license, the director shall issue a license
30 to engage in the title loan business in accordance with sections 367.500 to
31 367.533. The licensing year shall commence on January first and end the
32 following December thirty-first. The director may establish a biennial licensing
33 arrangement but in no case shall the fees be payable for more than one year at
34 a time. Each license shall be uniquely numbered and shall not be transferable
35 or assignable.

36 **6. Lenders licensed pursuant to this section shall annually remit**
37 **a one dollar surcharge for every title loan made by such lender during**
38 **the year, to the division of finance, to be placed in the small loan**
39 **community reinvestment fund established under section 361.650.**

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 shall obtain a license from the
4 director of the division of finance. An annual license fee of three hundred dollars
5 per location shall be required. The license year shall commence on January first
6 each year and the license fee may be prorated for expired months. The director
7 may establish a biennial licensing arrangement but in no case shall the fees be
8 payable for more than one year at a time. The provisions of this section shall not
9 apply to pawnbroker loans, consumer credit loans as authorized under chapter
10 367, nor to a check accepted and deposited or cashed by the payee business on the
11 same or the following business day. The disclosures required by the federal

12 Truth in Lending Act and regulation Z shall be provided on any loan[, renewal
13 or extension] made pursuant to this section and the loan[, renewal or extension]
14 documents shall be signed by the borrower.

15 2. Entities making loans pursuant to this section shall **not charge**
16 **interest but may** contract for and receive [simple interest and] fees in
17 accordance with [sections 408.100 and] **section 408.140**. Any contract evidencing
18 any fee or charge of any kind whatsoever, except for bona fide clerical errors, in
19 violation of this section shall be void. Any person, firm or corporation who
20 receives or imposes a fee or charge in violation of this section shall be guilty of
21 a class A misdemeanor.

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

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

29 **NOTICE:**

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

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

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

37 (2) You may cancel this loan without costs by returning the full principal
38 balance to the lender by the close of the lender's next full business day. **At such**
39 **time, all fees paid when you entered into this loan will be returned to**
40 **you.**

41 6. [The lender shall renew the loan upon the borrower's written request
42 and the payment of any interest and fees due at the time of such renewal;
43 however, upon the first renewal of the loan agreement, and each subsequent
44 renewal thereafter, the borrower shall reduce the principal amount of the loan by
45 not less than five percent of the original amount of the loan until such loan is
46 paid in full. However, no loan may be renewed more than six times.] **No lender**
47 **shall renew any unsecured loan of five hundred dollars or less. No**
48 **lender shall make such a loan to a borrower if the loan would cause the**

49 **borrower to have more than one unsecured loan of five hundred dollars**
50 **or less, or make such a loan to a borrower within one business day of**
51 **a borrower paying or otherwise satisfying in full, a previous loan.**

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

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

59 9. **Lenders licensed pursuant to this section shall annually remit**
60 **a one dollar surcharge for every unsecured loan of five hundred dollars**
61 **or less made by such lender during the year, to the division of finance,**
62 **to be placed in the small loan community reinvestment fund established**
63 **under section 361.650.**

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

71 [10.] 11. Whenever it shall appear to the director that any lender
72 licensed pursuant to this section is failing, refusing or neglecting to make a good
73 faith effort to comply with the provisions of this section, or any laws relating to
74 consumer loans, the director may issue an order to cease and desist which order
75 may be enforceable by a civil penalty of not more than one thousand dollars per
76 day for each day that the neglect, failure or refusal shall continue. The penalty
77 shall be assessed and collected by the director. In determining the amount of the
78 penalty, the director shall take into account the appropriateness of the penalty
79 with respect to the gravity of the violation, the history of previous violations, and
80 such other matters as justice may require.

408.505. 1. This section shall apply to:

2 (1) Unsecured loans **of five hundred dollars or less** made by lenders
3 licensed or who should have been 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. **For all loans made pursuant to this section and section 408.500, [shall**
9 **have 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] the**
11 **borrower shall have the choice of choosing a loan with a term of either**
12 **thirty, sixty, or ninety days. Lenders shall not offer any loan of any**
13 **other duration. The borrower shall be required to make two**
14 **installment payments within each thirty-day period of the loan's**
15 **duration.**

16 3. A lender may only charge [simple interest and] fees in accordance with
17 [sections 408.100 and] **section 408.140.** No other charges of any nature shall be
18 permitted except as provided by this section, including any charges for cashing
19 the loan proceeds if they are given in check form. [However, no borrower shall
20 be required to pay a total amount of accumulated interest and fees in excess of
21 seventy-five percent of the initial loan amount on any single loan authorized
22 pursuant to this section for the entire term of that loan and all renewals
23 authorized by section 408.500 and this section.] **However, if the borrower**
24 **pays the loan in full prior to the end of the term of the loan, the**
25 **original loan fee shall be reduced on a prorated basis and the portion**
26 **of the fee representing the remainder of the term shall be returned to**
27 **the borrower. The fee shall be prorated by assigning an equal dollar**
28 **amount to each day of the term of the loan. All fees paid upon entering**
29 **into the loan shall be returned to the borrower if the borrower returns**
30 **the full principal balance to the lender by the close of the lender's next**
31 **full business day.**

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 if at the time the payee accepts a check or similar
58 sight order for the payment of money, he or she does so with the understanding
59 that the payee will not present it for payment until later and the payee knows or
60 has reason to believe that there are insufficient funds on deposit with the drawee
61 at the time of acceptance. However, this section shall not apply if the person's
62 account on which the instrument was written was closed by the consumer before
63 the agreed-upon date of negotiation or the consumer has stopped payment on the
64 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 subject
74 to the provisions of section 408.500 and this section.

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