

SECOND REGULAR SESSION

# HOUSE BILL NO. 1236

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES WALKER (Sponsor), JOLLY, CURLS, WILSON (42),  
HILGEMANN, DARROUGH, CORCORAN, EL-AMIN, MEINERS, RIBACK WILSON (25), WHORTON,  
CAMPBELL, VOGT AND RANSDALL (Co-sponsors).

Read 1<sup>st</sup> time January 22, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3982L.011

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### AN ACT

To repeal sections 408.500, 408.505, and 408.506, RSMo, and to enact in lieu thereof three new sections relating to payday loans, with penalty provisions.

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Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 408.500, 408.505, and 408.506, to read as follows:

- 408.500. 1. **Notwithstanding any other provision of law to the contrary, all** lenders, other than banks, trust companies, credit unions, savings banks and savings and loan companies, in the business of making unsecured loans of five hundred dollars or less shall obtain a license from the director of the division of finance. An annual license fee of three hundred dollars per location shall be required. The license year shall commence on January first each year and the license fee may be prorated for expired months. The director may establish a biennial licensing arrangement but in no case shall the fees be payable for more than one year at a time. The provisions of this section shall not apply to pawnbroker loans, consumer credit loans as authorized under chapter 367, RSMo, nor to a check accepted and deposited or cashed by the payee business on the same or the following business day. The disclosures required by the federal Truth in Lending Act and regulation Z shall be provided on any loan, renewal or extension made pursuant to this section and the loan, renewal or extension documents shall be signed by the borrower.
2. **Subject to the limitations in subsection 3 of section 408.505,** entities making loans

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

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

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

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

26 NOTICE:

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

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

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

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

36 6. [The] **No** lender shall renew [the] **a** loan [upon the borrower's written request and the  
37 payment of any interest and fees due at the time of such renewal; however, upon the first renewal  
38 of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the  
39 principal amount of the loan by not less than five percent of the original amount of the loan until  
40 such loan is paid in full. However, no loan may be renewed more than six times] **made under**  
41 **this section and section 408.505.**

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

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

48 9. Any lender licensed pursuant to this section who fails, refuses or neglects to comply  
49 with the provisions of this section, or any laws relating to consumer loans or commits any  
50 criminal act may have its license suspended or revoked by the director of finance after a hearing

51 before the director on an order of the director to show cause why such order of suspension or  
52 revocation should not be entered specifying the grounds therefor which shall be served on the  
53 licensee at least ten days prior to the hearing.

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

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

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

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

76 (3) **Impose an order of rescission, restitution, or disgorgement directed to a person**  
77 **or entity that has engaged in an act, practice, or course of business constituting a violation**  
78 **of sections 400.500 to 400.506 or any laws relating to consumer loans;**

79 (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 **whether** licensed  
3 or [who should have been licensed] **not** pursuant to section 408.500;

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

6 (3) Any person that the Missouri division of finance determines has engaged in  
7 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 a minimum  
9 term of fourteen days and a maximum term of thirty-one days, regardless of whether the loan is  
10 an original loan or renewed loan.

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

19           **(1) Not more than fifteen dollars per one hundred dollars of principal amount of**  
20 **the loan for the first thirty days of the loan; and**

21           **(2) Not more than one and one-half times the maximum rate permitted under**  
22 **section 408.145 on any outstanding loan balance for any loan continued or extended after**  
23 **the thirtieth day after the original date of the loan whether made by the original lender or**  
24 **offered, made, or arranged by any person or entity on behalf of the original lender or any**  
25 **person or entity affiliated with the lender.**

26

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

30           4. [A loan made pursuant to the provisions of section 408.500 and this section shall be  
31 deemed completed and shall not be considered a renewed loan when the lender presents the  
32 instrument for payment or the payee redeems the instrument by paying the full amount of the  
33 instrument to the lender. Once the payee has completed the loan, the payee may enter into a new  
34 loan with a lender.

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

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

43           (2) The lender does not know, or have reason to believe, that the consumer's written

44 certification is false.

45 [6.] 5. On a consumer loan transaction where cash is advanced in exchange for a personal  
46 check, a return check charge may be charged in the amounts provided by sections 408.653 and  
47 408.654, as applicable.

48 [7.] 6. No state or public employee or official, including a judge of any court of this state,  
49 shall enforce the provisions of any contract for payment of money subject to this section which  
50 violates the provisions of section 408.500 and this section.

51 [8.] 7. A person does not commit the crime of passing a bad check pursuant to section  
52 570.120, RSMo, if at the time the payee accepts a check or similar sight order for the payment  
53 of money, he or she does so with the understanding that the payee will not present it for payment  
54 until later and the payee knows or has reason to believe that there are insufficient funds on  
55 deposit with the drawee at the time of acceptance. However, this section shall not apply if the  
56 person's account on which the instrument was written was closed by the consumer before the  
57 agreed-upon date of negotiation or the consumer has stopped payment on the check.

58 [9.] 8. A lender shall not use a device or agreement that would have the effect of  
59 charging or collecting more fees, charges, or interest than allowed by this section, including, but  
60 not limited to:

- 61 (1) Entering into a different type of transaction;
- 62 (2) Entering into a sales lease back arrangement;
- 63 (3) Catalog sales;
- 64 (4) Entering into any other transaction with the consumer that is designed to evade the  
65 applicability of this section.

66 [10.] 9. The provisions of this section shall [only] apply to entities [subject to] **making**  
67 **unsecured loans of five hundred dollars or less regardless of whether licensure is required**  
68 **under** the provisions of section 408.500 and this section.

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