

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for House Bill No. 1446 Page 11, Section 408.380, Line 20
by inserting after all of said line the following:

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

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

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

NOTICE:

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

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

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

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

10 6. [The] No lender shall renew [the] a loan [upon the borrower's written request and the
11 payment of any interest and fees due at the time of such renewal; however, upon the first renewal
12 of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the
13 principal amount of the loan by not less than five percent of the original amount of the loan until
14 such loan is paid in full. However, no loan may be renewed more than six times] made under this
15 section and section 408.505, make a loan to a person if the loan would cause a person to have
16 more than one unsecured loan of five hundred dollars or less, or make a loan to a borrower within
17 two weeks of a borrower paying or otherwise satisfying in full a previous unsecured loan of five
18 hundred dollars or less.

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

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

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

31 10. Whenever it shall appear to the director or the attorney general that any lender
32 licensed pursuant to this section is failing, refusing or neglecting to make a good faith effort to
33 comply with the provisions of this section or section 408.505, or any laws relating to consumer
34 loans, the director or the attorney general may issue an order to cease and desist which order may
35 be enforceable by a civil penalty of not more than one thousand dollars per day for each day that
36 the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the

1 director[. In determining the amount of the penalty, the director shall take into account the
2 appropriateness of the penalty with respect to the gravity of the violation, the history of previous
3 violations, and such other matters as justice may require] or the attorney general on behalf of the
4 director.

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

- 13 (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
14 (2) Impose a civil penalty up to one thousand dollars per day for each day that the neglect,
15 failure, or refusal continues;
16 (3) Impose an order of rescission, restitution, or disgorgement directed to a person or
17 entity that has engaged in an act, practice, or course of business constituting a violation of sections
18 408.500 to 408.506 or any laws relating to consumer loans;
19 (4) Order such other relief as the court deems appropriate.

20 408.505. 1. This section shall apply to:

- 21 (1) Unsecured loans of five hundred dollars or less made by lenders licensed or who
22 should have been licensed pursuant to section 408.500;
23 (2) Any person that the Missouri division of finance determines that has entered into a
24 transaction that, in substance, is a disguised loan; and
25 (3) Any person that the Missouri division of finance determines has engaged in subterfuge
26 for the purpose of avoiding the provisions of this section.

27 2. [All loans made pursuant to this section and section 408.500, shall have a minimum
28 term of fourteen days and a maximum term of thirty-one days, regardless of whether the loan is an
29 original loan or renewed loan.] A lender shall give a borrower a minimum of ninety days to repay
30 a loan. A payment shall be required every two weeks so that the loan will fully amortize in ninety
31 days.

32 3. [A lender may only charge simple interest and fees in accordance with sections 408.100
33 and 408.140. No other charges of any nature shall be permitted except as provided by this section,
34 including any charges for cashing the loan proceeds if they are given in check form. However, no
35 borrower shall be required to pay a total amount of accumulated interest and fees in excess of

seventy-five percent of the initial loan amount on any single loan authorized pursuant to this section for the entire term of that loan and all renewals authorized by section 408.500 and this section.] (1) A lender may charge and receive on each loan interest at a simple annual rate not to exceed thirty-six percent.

(2) A lender may charge a loan set-up fee equal to five percent of the loan up to a maximum of twenty-five dollars.

(3) No other charges of any nature shall be permitted except as provided by this section, including but not limited to late fees.

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

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

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

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

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

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

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

1 date of negotiation or the consumer has stopped payment on the check.

2 [9.] 8. A lender shall not use a device or agreement that would have the effect of charging
3 or collecting more fees, charges, or interest than allowed by this section, including, but not limited
4 to:

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

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

7 (3) Catalog sales;

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

10 [10.] 9. The provisions of this section shall only apply to entities [subject to] making
11 unsecured loans of five hundred dollars or less under the provisions of section 408.500 and this
12 section.”; and

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14 Further amend said bill by amending the title, enacting clause, and intersectional references
15 accordingly.
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