

SECOND REGULAR SESSION

HOUSE BILL NO. 2116

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STILL (Sponsor), ATKINS, AULL, BIERMANN, BRINGER, BURNETT, CALLOWAY, CARTER, LIESE, FRAME, CORCORAN, COLONA, ENGLUND, CURLS, FISCHER (107), HARRIS, HODGES, GRILL, CHAPPELLE-NADAL, BROWN (50), HOLSMAN, HUGHES, JONES (63), KANDER, KELLY, KIRKTON, KRATKY, KUESSNER, LAMPE, LeVOTA, LOW, McCLANAHAN, McDONALD, McNEIL, MEADOWS, MEINERS, MORRIS, OXFORD, NASHEED, NORR, PACE, QUINN, SCAVUZZO, NEWMAN, HOSKINS (80), SCHIEFFER, SCHOEMEHL, SCHUPP, SHIVELY, SKAGGS, SPRENG, STORCH, TODD, WALSH, WALTON GRAY, WEBBER, WITTE, YAEGER, ZIMMERMAN, FALLERT, CASEY, LeBLANC, ROORDA, SALVA, KOMO, RUCKER, HUMMEL, VOGT, WEBB AND TALBOY (Co-sponsors).

4900L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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

Section A. Sections 408.500 and 408.505, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 408.500 and 408.505, to read as follows:
408.500. 1. Lenders, other than banks, trust companies, credit unions, savings banks and
2 savings and loan companies, in the business of making unsecured loans of five hundred dollars
3 or less shall obtain a license from the director of the division of finance. An annual license fee
4 of three hundred dollars per location shall be required. The license year shall commence on
5 January first each year and the license fee may be prorated for expired months. The director may
6 establish a biennial licensing arrangement but in no case shall the fees be payable for more than
7 one year at a time. The provisions of this section shall not apply to pawnbroker loans, consumer
8 credit loans as authorized under chapter 367, RSMo, nor to a check accepted and deposited or
9 cashed by the payee business on the same or the following business day. The disclosures
10 required by the federal Truth in Lending Act and regulation Z shall be provided on any loan,

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

11 renewal or extension made pursuant to this section and the loan, renewal or extension documents
12 shall be signed by the borrower.

13 2. **Subject to the limitations in subsection 3 of section 408.505**, entities making loans
14 pursuant to this section shall contract for and receive simple interest and fees in accordance with
15 sections 408.100 and 408.140. Any contract evidencing any fee or charge of any kind
16 whatsoever, except for bona fide clerical errors, in violation of this section shall be void. Any
17 person, firm or corporation who receives or imposes a fee or charge in violation of this section
18 shall be guilty of a class A misdemeanor.

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

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

25 NOTICE:

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

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

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

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

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

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

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

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

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

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

74 (1) Issue a permanent or temporary injunction, restraining order, or declaratory
75 judgment;

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

78 (3) Impose an order of rescission, restitution, or disgorgement directed to a person
79 or entity that has engaged in an act, practice, or course of business constituting a violation
80 of sections 408.500 to 408.506 or any laws relating to consumer loans;

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

82 **12. It shall be unlawful to facilitate, encourage, solicit, advertise, or provide**
83 **unsecured loans of five hundred dollars or less on the premises of any nursing home**
84 **property or any residential care facility, assisted living facility, intermediate care facility,**
85 **or skilled nursing facility, as defined in section 198.006.**

408.505. 1. This section shall apply to:

2 (1) Unsecured loans **of five hundred dollars or less** made by lenders licensed or who
3 should have been licensed 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.] **A lender shall give a borrower a minimum of ninety days**
11 **to repay a loan. A payment shall be required every two weeks so that the loan will fully**
12 **amortize in ninety days.**

13 3. [A lender may only charge simple interest and fees in accordance with sections
14 408.100 and 408.140. No other charges of any nature shall be permitted except as provided by
15 this section, including any charges for cashing the loan proceeds if they are given in check form.
16 However, no borrower shall be required to pay a total amount of accumulated interest and fees
17 in excess of 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 authorized by section
19 408.500 and this section.] **(1) A lender may charge and receive on each loan interest at a**
20 **simple annual rate not to exceed thirty-six percent.**

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

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

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

30 5. Except as provided in subsection 3 of this section,] No loan made pursuant to this
31 section shall be repaid by the proceeds of another loan made by the same lender or any person
32 or entity affiliated with the lender. A lender, person or entity affiliated with the lender shall not

33 have more than five hundred dollars in loans made pursuant to section 408.500 and this section
34 outstanding to the same borrower at any one time. A lender complies with this subsection if:

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

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

40 [6.] 5. On a consumer loan transaction where cash is advanced in exchange for a personal
41 check, a return check charge may be charged in the amounts provided by sections 408.653 and
42 408.654, as applicable.

43 [7.] 6. No state or public employee or official, including a judge of any court of this state,
44 shall enforce the provisions of any contract for payment of money subject to this section which
45 violates the provisions of section 408.500 and this section.

46 [8.] 7. A person does not commit the crime of passing a bad check pursuant to section
47 570.120, RSMo, if at the time the payee accepts a check or similar sight order for the payment
48 of money, he or she does so with the understanding that the payee will not present it for payment
49 until later and the payee knows or has reason to believe that there are insufficient funds on
50 deposit with the drawee at the time of acceptance. However, this section shall not apply if the
51 person's account on which the instrument was written was closed by the consumer before the
52 agreed-upon date of negotiation or the consumer has stopped payment on the check.

53 [9.] 8. A lender shall not use a device or agreement that would have the effect of
54 charging or collecting more fees, charges, or interest than allowed by this section, including, but
55 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 designed to evade the
60 applicability of this section.

61 [10.] 9. The provisions of this section shall only apply to entities [subject to] **making**
62 **unsecured loans of five hundred dollars or less under** the provisions of section 408.500 and
63 this section.

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