

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for House Bill No. 1935, Page 11, Section 408.040, Line 42, 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, 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] fourteen-point bold type, and receipt thereof shall be acknowledged
5 by signature of 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 lender shall renew the loan upon the borrower's written request and the payment of
11 any interest and fees due at the time of such renewal; however, upon the [first] renewal of the loan
12 agreement, [and each subsequent renewal thereafter,] the borrower shall reduce the principal
13 amount of the loan by not less than five percent of the original amount of the loan until such loan
14 is paid in full. However, no loan may be renewed more than [six times] once. No lender shall
15 make a loan to a borrower if the loan would cause the borrower to have more than one unsecured
16 loan of five hundred dollars or less, or make a loan to a borrower within one day of a borrower
17 paying or otherwise satisfying in full a previous unsecured loan of five hundred dollars or less.
18 No consumer shall have more than five hundred dollars outstanding at any time among all
19 licensees in this state.

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

23 8. Each lender shall provide the following information to the consumer at the time of
24 signing the loan:

25 (1) The exact duration of the loan;

26 (2) The exact amount and date of payments due throughout the duration of the loan; and

27 (3) The exact amount of interest and fees to be charged throughout the duration of the
28 loan.

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

32 [9.] 10. Any lender licensed pursuant to this section who fails, refuses or neglects to
33 comply with the provisions of this section, or any laws relating to consumer loans or commits any
34 criminal act may have its license suspended or revoked by the director of finance after a hearing
35 before the director on an order of the director to show cause why such order of suspension or

1 revocation should not be entered specifying the grounds therefor which shall be served on the
2 licensee at least ten days prior to the hearing.

3 [10.] 11. Whenever it shall appear to the director that any lender licensed pursuant to this
4 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions
5 of this section, or any laws relating to consumer loans, the director may issue an order to cease
6 and desist which order may be enforceable by a civil penalty of not more than one thousand
7 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be
8 assessed and collected by the director. [In determining the amount of the penalty, the director
9 shall take into account the appropriateness of the penalty with respect to the gravity of the
10 violation, the history of previous violations, and such other matters as justice may require.]

11 408.505. 1. This section shall apply to:

12 (1) Unsecured loans of five hundred dollars or less made by lenders licensed or who
13 should have been licensed pursuant to section 408.500;

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

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

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

21 3. A lender may only charge simple interest and fees in accordance with sections 408.100
22 and 408.140. No other charges of any nature shall be permitted except as provided by this section,
23 including any charges for cashing the loan proceeds if they are given in check form. However, no
24 borrower shall be required to pay a total amount of accumulated interest and fees in excess of
25 seventy-five percent of the initial loan amount on any single loan authorized pursuant to this
26 section for the entire term of that loan [and all renewals] authorized by section 408.500 and this
27 section.

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

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

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

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

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

8 [6.] 5. On a consumer loan transaction where cash is advanced in exchange for a personal
9 check, a return check charge may be charged in the amounts provided by sections 408.653 and
10 408.654, as applicable.

11 [7.] 6. No state or public employee or official, including a judge of any court of this state,
12 shall enforce the provisions of any contract for payment of money subject to this section which
13 violates the provisions of section 408.500 and this section.

14 [8.] 7. A person does not commit the crime of passing a bad check pursuant to section
15 570.120 if at the time the payee accepts a check or similar sight order for the payment of money,
16 he or she does so with the understanding that the payee will not present it for payment until later
17 and the payee knows or has reason to believe that there are insufficient funds on deposit with the
18 drawee at the time of acceptance. However, this section shall not apply if the person's account on
19 which the instrument was written was closed by the consumer before the agreed-upon date of
20 negotiation or the consumer has stopped payment on the check.

21 [9.] 8. A lender shall not use a device or agreement that would have the effect of charging
22 or collecting more fees, charges, or interest than allowed by this section, including, but not limited
23 to:

- 24 (1) Entering into a different type of transaction;
25 (2) Entering into a sales lease back arrangement;
26 (3) Catalog sales;
27 (4) Entering into any other transaction with the consumer that is designed to evade the
28 applicability of this section.

29 9. The sole and exclusive remedy for lenders under section 408.500 and section 408.505
30 against a consumer who makes, utters, draws, or delivers any check, draft, or order for the
31 payment of money in connection with an unsecured loan of five hundred dollars or less which is
32 not honored, shall be a breach of contract claim. In such instance, lenders shall be barred from
33 bringing a civil action under section 570.123.

34 10. The provisions of this section shall only apply to entities [subject to] making
35 unsecured loans of five hundred dollars or less under the provisions of section 408.500 and this

1 section.

2 408.507. 1. The division of finance within the department of insurance, financial
3 institutions and professional registration shall develop and administer a real-time statewide
4 compliance system for payday lenders licensed under section 408.500 to record each payday loan
5 transaction. The division may operate the database or may contract with a single third-party
6 provider to operate the database. If the division contracts with the third-party provider for the
7 operation of the database, the division shall do all of the following:

8 (1) Ensure the third-party operates the database according to the provisions of this section;

9 (2) In selecting a third-party provider, consider the cost of providing the service and the
10 third-party provider's ability to meet all the requirements of this section;

11 (3) In selecting the third-party provider, give strong consideration to all of the following:

12 (a) The third-party provider's ability to prevent fraud, abuse, and other unlawful activity
13 associated with payday loan transactions and to provide additional tools for the administration and
14 enforcement of this section;

15 (b) Whether the provider is currently providing service for another state.

16 2. The division shall be charged with the following:

17 (1) Adopting rules governing the creation, structure, and use of the compliance system
18 which shall include a real-time customer eligibility verification charge as necessary to maintain
19 the system;

20 (2) Establishing requirements for the retention, archiving, and purging of information
21 entered into and stored by the system; and

22 (3) Fully implementing the system by January 1, 2013.

23 3. Any rule or portion of a rule, as that term is defined in section 536.010 that is created
24 under the authority delegated in this section shall become effective only if it complies with and is
25 subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section
26 and chapter 536 are nonseverable and if any of the powers vested with the general assembly
27 pursuant to chapter 536, to review, to delay the effective date, or to disapprove and annul a rule
28 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
29 proposed or adopted after August 28, 2012, shall be invalid and void.”; and

30
31 Further amend said bill by amending the title, enacting clause, and intersectional references
32 accordingly.