

SECOND REGULAR SESSION

HOUSE BILL NO. 1393

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GOSEN (Sponsor), MCGHEE, KLIPPENSTEIN,
HIGDON AND FRANZ (Co-sponsors).

4845L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 408.500 and 408.505, RSMo, and to enact in lieu thereof three new sections relating to unsecured loans of five hundred dollars or less, 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Section A. Sections 408.500 and 408.505, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 408.500, 408.505, and 408.507, to read as
3 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, nor to a check accepted and deposited or cashed
9 by the payee business on the same or the following business day. The disclosures required by
10 the federal Truth in Lending Act and regulation Z shall be provided on any loan[, renewal or
11 extension] made pursuant to this section and the loan[, renewal or extension] documents shall
12 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

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.

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
21 [bad check or] breach of contract shall not be considered as a fee or charge for purposes of this
22 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 lender shall renew the loan upon the borrower's written request and the payment
37 of any interest and fees due at the time of such renewal; however, upon the [first] renewal of the
38 loan agreement, [and each subsequent renewal thereafter,] the borrower shall reduce the principal
39 amount of the loan by not less than five percent of the original amount of the loan until such loan
40 is paid in full. However, no loan may be renewed more than [six times] **once. No lender shall**
41 **make a loan to a borrower if the loan would cause the borrower to have more than one**
42 **unsecured loan of five hundred dollars or less, or make a loan to a borrower within one**
43 **day of a borrower paying or otherwise satisfying in full a previous unsecured loan of five**
44 **hundred dollars or less. No consumer shall have more than five hundred dollars**
45 **outstanding at any time among all licensees in this state.**

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

49 8. **Each lender shall provide the following information to the consumer at the time**
50 **of signing the loan:**

51 (1) **The exact duration of the loan;**

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

54 **(3) The exact amount of interest and fees to be charged throughout the duration**
55 **of the loan.**

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

59 **[9.] 10.** Any lender licensed pursuant to this section who fails, refuses or neglects to
60 comply with the provisions of this section, or any laws relating to consumer loans or commits
61 any criminal act may have its license suspended or revoked by the director of finance after a
62 hearing before the director on an order of the director to show cause why such order of
63 suspension or revocation should not be entered specifying the grounds therefor which shall be
64 served on the licensee at least ten days prior to the hearing.

65 **[10.] 11.** Whenever it shall appear to the director that any lender licensed pursuant to this
66 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions
67 of this section, or any laws relating to consumer loans, the director may issue an order to cease
68 and desist which order may be enforceable by a civil penalty of not more than one thousand
69 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall
70 be assessed and collected by the director. [In determining the amount of the penalty, the director
71 shall take into account the appropriateness of the penalty with respect to the gravity of the
72 violation, the history of previous violations, and 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 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.

11 3. A lender may only charge simple interest and fees in accordance with sections 408.100
12 and 408.140. No other charges of any nature shall be permitted except as provided by this
13 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.

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

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

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

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

33 [6.] 5. On a consumer loan transaction where cash is advanced in exchange for a personal
34 check, a return check charge may be charged in the amounts provided by sections 408.653 and
35 408.654, as applicable.

36 [7.] 6. No state or public employee or official, including a judge of any court of this state,
37 shall enforce the provisions of any contract for payment of money subject to this section which
38 violates the provisions of section 408.500 and this section.

39 [8.] 7. A person does not commit the crime of passing a bad check pursuant to section
40 570.120 if at the time the payee accepts a check or similar sight order for the payment of money,
41 he or she does so with the understanding that the payee will not present it for payment until later
42 and the payee knows or has reason to believe that there are insufficient funds on deposit with the
43 drawee at the time of acceptance. However, this section shall not apply if the person's account
44 on which the instrument was written was closed by the consumer before the agreed-upon date
45 of negotiation or the consumer has stopped payment on the check.

46 [9.] 8. A lender shall not use a device or agreement that would have the effect of
47 charging or collecting more fees, charges, or interest than allowed by this section, including, but
48 not limited to:

- 49 (1) Entering into a different type of transaction;
50 (2) Entering into a sales lease back arrangement;
51 (3) Catalog sales;

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

54 **9. The sole and exclusive remedy for lenders under section 408.500 and section**
55 **408.505 against a consumer who makes, utters, draws, or delivers any check, draft, or**
56 **order for the payment of money in connection with an unsecured loan of five hundred**
57 **dollars or less which is not honored, shall be a breach of contract claim. In such instance,**
58 **lenders shall be barred from bringing a civil action under section 570.123.**

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

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

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

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

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

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

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

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

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

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

24 (3) Fully implementing the system by January 1, 2013; and

25 3. Any rule or portion of a rule, as that term is defined in section 536.010 that is
26 created under the authority delegated in this section shall become effective only if it

27 **complies with and is subject to all of the provisions of chapter 536, and, if applicable,**
28 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
29 **vested with the general assembly pursuant to chapter 536, to review, to delay the effective**
30 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
31 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2012,**
32 **shall be invalid and void.**

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