

FIRST REGULAR SESSION

HOUSE BILL NO. 221

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FOGLE.

0133H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 367.515, 408.500, 408.505, and 408.510, RSMo, and to enact in lieu thereof six new sections relating to small loans, with penalty provisions and a referendum clause.

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

Section A. Sections 367.515, 408.500, 408.505, and 408.510, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 367.105, 367.515, 408.101, 408.500, 408.505, and 408.510, to read as follows:

367.105. Any person making or offering a consumer credit loan shall contract for and receive interest and fees in accordance with sections 408.100, 408.101, 408.140, and 408.170, and such loan shall be subject to all provisions of sections 408.100, 408.101, 408.140, and 408.170.

367.515. A title lender shall contract for and receive simple interest and fees in accordance with sections 408.100, **408.101**, and 408.140, and such interest and fees shall be subject to all provisions of sections 408.100, **408.101**, and **408.140**.

408.101. 1. On any loan subject to this section, any person, firm, or corporation may charge, contract for, and receive interest on the unpaid principal balance at rates agreed to by the parties, provided that the combined interest, fees, and finance charges shall not exceed an annual percentage rate of thirty-six percent.

2. No person, firm, or corporation shall use any device or subterfuge to intentionally evade the requirements of this chapter to:

(1) Offer, make, assist a borrower in obtaining, or broker a loan at an annual percentage rate prohibited by this section;

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.

- 9 **(2) Make a loan disguised as a personal property sale and leaseback transaction;**
10 **(3) Disguise loan proceeds as cash rebates for the pretextual installment sale of**
11 **goods or services;**
12 **(4) Make, assist a borrower in obtaining, or broker an offer of credit, in whole or**
13 **in part, from a third party or while acting as an agent for a third party, regardless of**
14 **whether the third party is exempt from licensing or if the approval, acceptance, or**
15 **ratification by the third party is necessary to create a legal obligation for the third**
16 **party; or**
17 **(5) Charge, if authorized under any applicable section of Missouri law, any**
18 **application fee for providing credit or any fee for participation in a credit plan without**
19 **including the fee in the calculation of the annual percentage rate required under this**
20 **section.**

408.500. 1. Lenders, other than banks, trust companies, credit unions, savings banks
2 and savings and loan companies, in the business of making unsecured loans of five hundred
3 dollars or less shall obtain a license from the director of the division of finance. An annual
4 license fee of five hundred dollars per location shall be required. The license year shall
5 commence on January first each year and the license fee may be prorated for expired months.
6 The director may establish a biennial licensing arrangement but in no case shall the fees be
7 payable for more than one year at a time. The provisions of this section shall not apply to
8 pawnbroker loans, consumer credit loans as authorized under chapter 367, nor to a check
9 accepted and deposited or cashed by the payee business on the same or the following business
10 day. The disclosures required by the federal Truth in Lending Act, **15 U.S.C. Section 1601 et**
11 **seq.**, and regulation Z shall be provided on any loan, renewal or extension made pursuant to
12 this section and the loan, renewal or extension documents shall be signed by the borrower.

13 2. Entities making loans pursuant to this section shall contract for and receive simple
14 interest and fees in accordance with sections 408.100, **408.101**, and 408.140, **and such loans**
15 **shall be subject to all provisions of sections 408.100, 408.101, and 408.140.** Any contract
16 evidencing any fee or charge of any kind whatsoever, except for bona fide clerical errors, in
17 violation of this section shall be void. Any person, firm or corporation who receives or
18 imposes a fee or charge in violation of this section 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
24 the office, in at least fourteen-point bold type, the maximum annual percentage rates such
25 licensee 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
30 form set forth in at least ten-point bold type, and receipt thereof shall be acknowledged by
31 signature of the borrower:

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

34 (2) You may cancel this loan without costs by returning the full principal balance to
35 the 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
37 payment of any interest and fees due at the time of such renewal; however, upon the first
38 renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall
39 reduce the principal amount of the loan by not less than five percent of the original amount of
40 the loan until such loan is paid in full. However, no loan may be renewed more than six
41 times.

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

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

408.505. 1. This section shall apply to:

2 (1) Unsecured loans made by lenders licensed or who should have been licensed
3 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
10 is an original loan or renewed loan.

11 3. A lender may only charge simple interest and fees in accordance with sections
12 408.100, **408.101**, and 408.140, **and such interest and fees shall be subject to all**
13 **provisions of sections 408.100, 408.101, and 408.140.** No other charges of any nature shall
14 be permitted except as provided by this section, including any charges for cashing the loan
15 proceeds if they are given in check form. [~~However, no borrower shall be required to pay a~~
16 ~~total amount of accumulated interest and fees in excess of seventy-five percent of the initial~~
17 ~~loan amount on any single loan authorized pursuant to this section for the entire term of that~~
18 ~~loan and all renewals authorized by section 408.500 and this section.]~~

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

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

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

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

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

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

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

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

- 51 (1) Entering into a different type of transaction;
- 52 (2) Entering into a sales lease back arrangement;
- 53 (3) Catalog sales;
- 54 (4) Entering into any other transaction with the consumer that is designed to evade the
55 applicability of this section.

56 10. The provisions of this section shall only apply to entities subject to the provisions
57 of section 408.500 and this section.

408.510. ~~[Notwithstanding any other law to the contrary,]~~ **1. For purposes of this**
2 **section, the [phrase] following terms mean:**

3 **(1) "Consumer installment lender", a person licensed to make consumer**
4 **installment loans;**

5 **(2) "Consumer installment loans" [means],** secured or unsecured loans of any amount
6 and payable in not less than four substantially equal installments over a period of not less than
7 one hundred twenty days. ~~[The phrase "consumer installment lender" means a person~~
8 ~~licensed to make consumer installment loans.]~~

9 **2.** A consumer installment lender shall be licensed in the same manner and upon the
10 same terms as a lender making consumer credit loans. ~~[Such]~~

11 **3. A consumer installment [lenders] lender** shall contract for and receive interest and
12 fees in accordance with sections 408.100, **408.101**, 408.140, and 408.170~~].—Consumer~~
13 ~~installment lenders], and such interest and fees shall be subject to [the] all provisions of~~
14 **sections 408.100, 408.101, 408.140, and 408.170 and** sections 408.551 to 408.562.

Section B. This act is hereby submitted to the qualified voters of this state for
2 approval or rejection at an election, which is hereby ordered and which shall be held and
3 conducted on the Tuesday immediately following the first Monday in November, 2024, or at a

4 special election to be called by the governor for that purpose, pursuant to the laws and
5 constitutional provisions of this state applicable to general elections and the submission of
6 referendum measures by initiative petition, and it shall become effective when approved by a
7 majority of the votes cast thereon at such election and not otherwise.

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