

SECOND REGULAR SESSION

HOUSE BILL NO. 1172

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor),
HUGHES AND BAKER (25) (Co-sponsors).

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STEPHEN S. DAVIS, Chief Clerk

3868L.011

AN ACT

To repeal sections 408.500, 408.505, 408.506, and 408.510, RSMo, and to enact in lieu thereof one new section relating to certain unsecured loans, with a penalty provision.

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

Section A. Sections 408.500, 408.505, 408.506, and 408.510, RSMo, are repealed and
2 one new section enacted in lieu thereof, to be known as section 408.500, to read as follows:

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 three 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, RSMo, 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 and regulation Z shall be
11 provided on any loan, renewal or extension made pursuant to this section and the loan, renewal
12 or extension documents shall be signed by the borrower.] **Lenders exclusively in the business
13 of making unsecured loans under five hundred dollars and who are not otherwise
14 registered under this chapter shall be registered with the director of the division of finance**

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.

15 upon the payment of an annual registration fee of three hundred dollars. The registration
16 year shall commence on January first of each year and the registration fee may be prorated
17 for expired months. Such lenders shall not charge, contract for, or receive on such loans
18 interest or any fee of any type or kind whatsoever which exceed the approved rate as
19 provided in this subsection. Lenders shall file a rate schedule with the director who, upon
20 review, shall approve rates comparable with those lawfully charged in the marketplace for
21 similar loans. In determining marketplace interest rates, the director shall consider the
22 appropriateness of rate requests made by lenders and rates allowed on similar loans in the
23 states contiguous to Missouri. If the director takes no action upon a filed rate schedule
24 within thirty days of receipt, it shall be deemed approved as filed. The director, on
25 January first and July first of each year, shall consider the filing of new interest rate
26 schedules to reflect changes in the marketplace. The director may promulgate rules
27 regarding the computation and payment of interest, contract statements, payment receipts,
28 and advertising for loans made under this section. The provisions of this section shall not
29 apply to pawnbroker loans and small loans as authorized under chapter 367, RSMo.

30 2. [Entities making loans pursuant to this section shall contract for and receive simple
31 interest and fees in accordance with sections 408.100 and 408.140.] Any contract evidencing
32 any fee or charge of any kind whatsoever, except for bona fide clerical errors, in [violation of]
33 **excess of the rate established under** this section shall be void. Any person, firm or corporation
34 who receives or imposes a fee or charge in [violation of] **excess of the rate established under**
35 this section [shall be] **is** guilty of a class A misdemeanor.

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

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

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

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

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

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

51 6. The lender shall renew the loan upon the borrower's written request and the payment
52 of any interest and fees due at the time of such renewal; however, upon the first renewal of the
53 loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal
54 amount of the loan by not less than five percent of the original amount of the loan until such loan
55 is paid in full. However, no loan may be renewed more than six times.

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

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

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

68 10. Whenever it shall appear to the director that any lender licensed pursuant to this
69 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions
70 of this section, or any laws relating to consumer loans, the director may issue an order to cease
71 and desist which order may be enforceable by a civil penalty of not more than one thousand
72 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall
73 be assessed and collected by the director. In determining the amount of the penalty, the director
74 shall take into account the appropriateness of the penalty with respect to the gravity of the
75 violation, the history of previous violations, and such other matters as justice may require.] **Any**
76 **rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created**
77 **under the authority delegated in this section shall become effective only if it complies with**
78 **and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section**
79 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the**
80 **powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to**
81 **delay the effective date, or to disapprove and annul a rule are subsequently held**
82 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
83 **after August 28, 2006, shall be invalid and void.**

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[408.505. 1. This section shall apply to:

- 2 (1) Unsecured loans made by lenders licensed or who should have been
3 licensed pursuant to section 408.500;

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

6 (3) Any person that the Missouri division of finance determines has
7 engaged in 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
9 a minimum term of fourteen days and a maximum term of thirty-one days,
10 regardless of whether the loan is an original loan or renewed loan.

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

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

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

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

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

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

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

43 8. A person does not commit the crime of passing a bad check pursuant
44 to section 570.120, RSMo, if at the time the payee accepts a check or similar
45 sight order for the payment of money, he or she does so with the understanding
46 that the payee will not present it for payment until later and the payee knows or

47 has reason to believe that there are insufficient funds on deposit with the drawee
48 at the time of acceptance. However, this section shall not apply if the person's
49 account on which the instrument was written was closed by the consumer before
50 the agreed-upon date of negotiation or the consumer has stopped payment on the
51 check.

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

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

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

57 (3) Catalog sales;

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

60 10. The provisions of this section shall only apply to entities subject to
61 the provisions of section 408.500 and this section.]
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2 [408.506. The division of finance shall report to the general assembly
3 beginning on January 1, 2003, and on the first day of January every other year
4 thereafter, the number of licenses issued by the director pursuant to section
5 408.500, the number of loans issued by said lenders, the average face value of
6 such loans, the average number of times said loans are renewed, the number of
7 said loans that are defaulted on an annual basis, and the number and nature of
8 complaints made to the director by customers on such licensees and the
9 disposition of such complaints. Such report shall also include the average
10 interest and fees charged and collected by lenders on such loans, and a
11 comparison of such with similar small loan lenders from adjoining states.]

2 [408.510. Notwithstanding any other law to the contrary, the phrase
3 "consumer installment loans" means secured or unsecured loans of any amount
4 and payable in not less than four substantially equal installments over a period of
5 not less than one hundred twenty days. The phrase "consumer installment lender"
6 means a person licensed to make consumer installment loans. A consumer
7 installment lender shall be licensed in the same manner and upon the same terms
8 as a lender making consumer credit loans. Such consumer installment lenders
9 shall contract for and receive interest and fees in accordance with sections
10 408.100, 408.140, and 408.170. Consumer installment lenders shall be subject
11 to the provisions of sections 408.551 to 408.562.]

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