

FIRST REGULAR SESSION

HOUSE BILL NO. 989

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DAVIS (Sponsor), WALLACE, OXFORD, CASEY, MEADOWS,
KRATKY, WALSH, MOORE, DOUGHERTY, STEVENSON, ZIMMERMAN,
BRUNS AND SCHAAF (Co-sponsors).

Read 1st time February 26, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2277L.05I

AN ACT

To repeal sections 408.500, 408.505, 408.506, and 408.510, RSMo, and to enact in lieu thereof two new sections relating to 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Section A. Sections 408.500, 408.505, 408.506, and 408.510, RSMo, are repealed and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 two new sections enacted in lieu thereof, to be known as sections 408.500 and 408.505, to read
3 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

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.

12 or extension documents shall be signed by the borrower.] **As used in this section, the following**
13 **words and terms mean:**

14 (1) "Annual percentage rate", the same as Section 107 of the Truth-in-Lending Act,
15 **15 U.S.C. 1601, et seq., as implemented by regulation of the Board of Governors of the**
16 **Federal Reserve System. For purposes of this section, such term includes all fees and**
17 **charges, including fees and charges for single premium credit insurance and other**
18 **ancillary products sold in connection with the credit transaction, and such fees and charges**
19 **shall be included in the calculation of the annual percentage rate;**

20 (2) "Consumer credit", an unsecured loan of less than five hundred dollars, except
21 **that such term shall not include a residential mortgage or a loan procured in the course of**
22 **purchasing a car or other personal property when that loan is offered for the express**
23 **purpose of financing the purchase and is secured by the car or personal property**
24 **procured;**

25 (3) "Interest", all cost elements associated with the extension of credit, including
26 **fees, service charges, renewal charges, credit insurance premiums, any ancillary product**
27 **sold with any extension of credit, and any other charge or premium with respect to the**
28 **extension of consumer credit.**

29 2. Entities making loans pursuant to this section shall contract for and receive simple
30 interest and fees in accordance with sections 408.100 and 408.140. **A lender extending**
31 **consumer credit under this section shall not impose an annual percentage rate of interest**
32 **greater than ten percent over prime with respect to the consumer credit extended to any**
33 **person.**

34 3. Any contract evidencing any fee or charge of any kind whatsoever, except for bona
35 fide clerical errors, in [violation of] **excess of the rate established under** this section shall be
36 void. Any person, firm or corporation who receives or imposes a fee or charge in [violation of]
37 **excess of the rate established under** this section shall be guilty of a class A misdemeanor.

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

42 4. **Lender exclusively in the business of making unsecured loans under five hundred**
43 **dollars and who are not otherwise licensed under this chapter shall obtain a license with**
44 **the director of the division of finance upon the payment of an annual license fee of three**
45 **hundred dollars. The license year shall commence on January first of each year and the**
46 **license fee may be prorated for expired months.**

81 **(1) The lender rolls over, renews, repays, refinances, or consolidates any consumer**
82 **credit extended to the borrower by the same lender with the proceeds of other credit**
83 **extended to the borrower;**

84 **(2) The borrower is required to waive the borrower's right to legal recourse under**
85 **any otherwise applicable provision of state or federal law including the Servicemembers'**
86 **Civil Relief Act;**

87 **(3) The lender requires the borrower to submit to arbitration or imposes onerous**
88 **legal notice provisions in the case of a dispute;**

89 **(4) The lender demands unreasonable notice from the borrower as a condition for**
90 **legal action;**

91 **(5) The lender uses a check or other method of access to a deposit, savings, or other**
92 **financial account maintained by the borrower, or the title of a vehicle as security for the**
93 **obligation;**

94 **(6) The lender requires as a condition for the extension of credit that the borrower**
95 **establish an allotment to repay an obligation; or**

96 **(7) The borrower is prohibited from prepaying the loan or is charged a penalty or**
97 **fee for prepaying all or part of the loan.**

98 **10.** When making or negotiating loans, a licensee shall consider the financial ability of
99 the borrower to reasonably repay the loan in the time and manner specified in the loan contract.
100 All records shall be retained at least two years.

101 **[8.] 11.** A licensee who ceases business pursuant to this section must notify the director
102 to request an examination of all records within ten business days prior to cessation. All records
103 must be retained at least two years.

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

110 **10.] 12.** Whenever it shall appear to the director **or the attorney general** that any lender
111 licensed pursuant to this section is failing, refusing or neglecting to make a good faith effort to
112 comply with the provisions of this section, or any laws relating to consumer loans, the director
113 **or the attorney general** may issue an order to cease and desist which order may be enforceable
114 by a civil penalty of not more than one thousand dollars per day for each day that the neglect,
115 failure or refusal shall continue. The penalty shall be assessed and collected by the director **or**
116 **the attorney general**. In determining the amount of the penalty, the director **or the attorney**

117 **general** shall take into account the appropriateness of the penalty with respect to the gravity of
118 the violation, the history of previous violations, and such other matters as justice may require.

119 **13. The director may promulgate rules to implement the provisions of this section**
120 **regarding the computation and payment of interest, contract statements, payment receipts,**
121 **and advertising for loans. The provisions of this section shall not apply to pawnbroker**
122 **loans and small loans authorized under chapter 367, RSMo. Any rule or portion of a rule,**
123 **as that term is defined in section 536.010, RSMo, that is created under the authority**
124 **delegated in this section shall become effective only if it complies with and is subject to all**
125 **of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This**
126 **section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the**
127 **general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or**
128 **to disapprove and annul a rule are subsequently held unconstitutional, then the grant of**
129 **rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be**
130 **invalid and void.**

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 is
10 an original loan or renewed loan.

11 3.] A lender may only charge simple interest and fees in accordance with sections
12 408.100 and 408.140. No other charges of any nature shall be permitted except as provided by
13 this 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.] A lender shall disclose to the borrower the total amount of interest paid upon the**
24 **maturity date of the loan.**

25 **2.** Except as provided in subsection [3] **1** of this section, no loan made pursuant to this
26 section shall be repaid by the proceeds of another loan made by the same lender or any person
27 or entity affiliated with the lender. A lender, person or entity affiliated with the lender shall not
28 have more than five hundred dollars in loans made pursuant to section 408.500 and this section
29 outstanding to 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 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.] 3.** 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 and
37 408.654, 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 which
40 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, RSMo, if at the time the payee accepts a check or similar sight order for the payment
43 of 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.]

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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