

FIRST REGULAR SESSION

HOUSE BILL NO. 359

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEARA.

0809L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 408.500 and 408.505, RSMo, and to enact in lieu thereof two new sections relating to payday loans, 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Section A. Sections 408.500 and 408.505, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 408.500 and 408.505, to read as follows:

408.500. 1. **Sections 408.500 to 408.510 shall be known as the "Payday Loan Protection Act".**

2. 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. **Such disclosures shall include but are not limited to annual percentage rates, finance charges, amounts financed, and payment totals.**

[2.] 3. **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

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.

18 with sections 408.100 and 408.140. Any contract evidencing any fee or charge of any kind
19 whatsoever, except for bona fide clerical errors, in violation of this section shall be void. Any
20 person, firm or corporation who receives or imposes a fee or charge in violation of this section
21 shall be guilty of a class A misdemeanor.

22 [3.] 4. Notwithstanding any other law to the contrary, cost of collection expenses, which
23 include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad
24 check or breach of contract shall not be considered as a fee or charge for purposes of this section.

25 [4.] 5. Lenders licensed pursuant to this section shall conspicuously post in the lobby of
26 the office, in at least fourteen-point bold type, the maximum annual percentage rates such
27 licensee is currently charging and the statement: NOTICE:

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

30 [5.] 6. The lender shall provide the borrower with a notice in substantially the following
31 form set forth in at least ten-point bold type, and receipt thereof shall be acknowledged by
32 signature of the borrower:

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

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

37 [6.] 7. The lender shall renew the loan upon the borrower's written request [and the
38 payment of any interest and fees due at the time of such renewal]; however, upon the first
39 renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce
40 the principal amount of the loan by not less than five percent of the original amount of the loan
41 until such loan is paid in full. However, no loan may be renewed more than six times.

42 [7.] 8. When making or negotiating loans, a licensee shall consider the financial ability
43 of 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.] 9. A licensee who ceases business pursuant to this section must notify the director
46 to 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.] 10. 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.] **11.** 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 provisions
56 of this section **or section 408.505**, or any laws relating to consumer loans, the director may issue
57 an 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. The
59 penalty shall be assessed and collected by the director. In determining the amount of the penalty,
60 the director shall take into account the appropriateness of the penalty with respect to the gravity
61 of the 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.] **A lender shall give the borrower the following options to
11 repay any loan under sections 408.500 to 408.510:**

12 (1) **The borrower may repay the full amount of the loan in one payment which is
13 to be made on the date in which the payment is due; or**

14 (2) **The borrower may repay the loan in four separate payments in which the
15 principal amount of the loan is reduced by twenty-five percent upon each payment.**

16 3. [A lender may only charge simple interest and fees in accordance with sections
17 408.100 and 408.140. No other charges of any nature shall be permitted except as provided by
18 this section, including any charges for cashing the loan proceeds if they are given in check form.
19 However, no borrower shall be required to pay a total amount of accumulated interest and fees
20 in excess of seventy-five percent of the initial loan amount on any single loan authorized
21 pursuant to this section for the entire term of that loan and all renewals authorized by section
22 408.500 and this section.] (1) **A lender may charge and receive on each loan interest at a
23 simple annual rate not to exceed eighteen percent; however, such interest charged shall not
24 exceed eighty dollars on each loan.**

25 (2) **A lender may charge origination and documentation fees on each loan.**

26 (3) **Any fees charged on a returned check shall not be considered a fee or charge
27 for purposes of this 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
35 or entity affiliated with the lender. A lender, person or entity affiliated with the lender shall not
36 have more than five hundred dollars in loans made pursuant to section 408.500 and this section
37 outstanding to the same borrower at any one time. A lender complies with this subsection if:

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

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

43 6. On a consumer loan transaction where cash is advanced in exchange for a personal
44 check, a return check charge may be charged [in the amounts provided by sections 408.653 and
45 408.654, as applicable].

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

49 8. A person does not commit the crime of passing a bad check pursuant to section
50 570.120 if at the time the payee accepts a check or similar sight order for the payment of money,
51 he or she does so with the understanding that the payee will not present it for payment until later
52 and the payee knows or has reason to believe that there are insufficient funds on deposit with the
53 drawee at the time of acceptance. However, this section shall not apply if the person's account
54 on which the instrument was written was closed by the consumer before the agreed-upon date
55 of negotiation or the consumer has stopped payment on the check.

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

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

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

61 (3) Catalog sales;

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

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

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