

FIRST REGULAR SESSION

# HOUSE BILL NO. 1200

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CARPENTER.

2094H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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

Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 408.500, 408.503, 408.505, and 408.506, to read as follows:

408.500. 1. 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 five 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, **15 U.S.C. Section 1601 et seq.**, 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.

2. Entities making loans pursuant to this section shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140. Any contract evidencing any fee or charge of any kind whatsoever, except for bona fide clerical errors, in violation of this

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 section shall be void. Any person, firm, or corporation who receives or imposes a fee or charge  
17 in violation of this section shall be guilty of a class A misdemeanor.

18 3. Notwithstanding any other law to the contrary, cost of collection expenses, which  
19 include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad  
20 check or breach of contract shall not be considered as a fee or charge for purposes of this section.  
21 **Notwithstanding any other law to the contrary, any costs associated with the return of**  
22 **checks shall not be considered as a fee or charge for the purposes of this 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 **and the fee,**  
25 **in terms of dollars charged per one hundred dollars loaned, that** such licensee is currently  
26 charging and the statement:

27 NOTICE:

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

30 5. The lender shall provide the borrower with a notice in substantially the following form  
31 set forth in at least ten-point bold type, and receipt thereof shall be acknowledged by signature  
32 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. ~~[The lender shall renew the loan upon the borrower's written request and the payment~~  
38 ~~of any interest and fees due at the time of such renewal; however, upon the first renewal of the~~  
39 ~~loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal~~  
40 ~~amount of the loan by not less than five percent of the original amount of the loan until such loan~~  
41 ~~is paid in full. However, no loan may be renewed more than six times.]~~ **No lender licensed**  
42 **under this section shall renew or extend a loan, except that a lender shall permit a**  
43 **consumer to use an extended payment plan (EPP) as provided under this subsection. A**  
44 **borrower may pay any outstanding loan under this section from any licensee by means of**  
45 **an EPP containing, at a minimum, the following provisions:**

46 (1) **A borrower shall not be eligible to enter into more than one EPP in any twelve-**  
47 **month period with an individual lender;**

48 (2) **To enter into an EPP with respect to a loan under this section, the borrower**  
49 **shall agree in a written and signed document to repay the amount owed in four or fewer**  
50 **equal installments over an aggregate term of sixty days or less if the borrower receives**  
51 **bimonthly paychecks or an aggregate term of one hundred twenty days or less if the**

52 borrower receives monthly paychecks. Such installments shall coincide with the dates the  
53 borrower expects to earn regular income. Interest shall not accrue on the indebtedness  
54 during the term of the EPP. The borrower may prepay an EPP in full at any time without  
55 penalty. If the borrower fails to pay the amount owed under the EPP when due, then the  
56 licensee may immediately accelerate the unpaid loan balance; and

57 (3) If the borrower enters into an EPP, the licensee shall not make a loan under this  
58 section to the borrower until the borrower satisfies the balance of the loan under the terms  
59 of the EPP in full.

60

61 The licensee shall conspicuously post in the lobby of the office, in at least fourteen-point  
62 bold type, a notice that the borrower may participate in an EPP and that brochures are  
63 available at the counter containing terms and conditions of the EPP program. A borrower  
64 may invoke the EPP by the close of business on the day before the due date of the loan  
65 payment by returning to the office where he or she obtained the loan or by using the same  
66 method the borrower used originally to obtain the loan. To invoke the EPP, a borrower  
67 shall sign an amendment to the original agreement reflecting the new payment schedule.  
68 If a borrower fails to make full payment upon the expiration of the original loan or upon  
69 expiration of the EPP, no lender shall charge any additional fees or interest on the  
70 outstanding loan. A lender shall comply with the provisions of subsection 11 of section  
71 408.505 with regard to collection practices on the loan.

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

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

78 9. A lender that offers unsecured short-term loans under sections 408.500 and  
79 408.505 to Missouri residents through the internet shall be licensed in Missouri and shall  
80 comply with the provisions of sections 408.500 and 408.505. This subsection shall not apply  
81 if such compliance is preempted by federal law.

82 10. Lenders licensed under this section shall implement procedures to inform  
83 consumers of the intended use of the short-term, unsecured loans. These procedures shall  
84 include the placement of a "Customer Notice" on all marketing materials, including all  
85 television, print, radio, online advertising, direct mail, and in-store promotional materials.

86 11. Any lender licensed pursuant to this section who fails, refuses or neglects to comply  
87 with the provisions of this section, or any laws relating to consumer loans or commits any

88 criminal act may have its license suspended or revoked by the director of finance after a hearing  
89 before the director on an order of the director to show cause why such order of suspension or  
90 revocation should not be entered specifying the grounds therefor which shall be served on the  
91 licensee at least ten days prior to the hearing.

92 [10.] 12. Whenever it shall appear to the director that any lender licensed pursuant to this  
93 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions  
94 of this section, or any laws relating to consumer loans, the director may issue an order to cease  
95 and desist which order may be enforceable by a civil penalty of not more than one thousand  
96 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall  
97 be assessed and collected by the director. In determining the amount of the penalty, the director  
98 shall take into account the appropriateness of the penalty with respect to the gravity of the  
99 violation, the history of previous violations, and such other matters as justice may require.

**408.503. 1. As used in this section, the following terms mean:**

2 (1) "Basic living expenses", expenditures, other than payments for major financial  
3 obligations, that a consumer makes for goods and services that are necessary to maintain  
4 the consumer's health, welfare, and ability to produce income and the health and welfare  
5 of the members of the consumer's household who are financially dependent on the  
6 consumer;

7 (2) "Debt-to-income ratio", the ratio, expressed as a percentage, of:

8 (a) The sum of the amounts that the lender projects will be payable by the  
9 consumer for major financial obligations during the relevant monthly period and the  
10 payments under the covered short-term loan during the relevant monthly period; to

11 (b) The net income that the lender projects the consumer will receive during the  
12 relevant monthly period,

13

14 all of which projected amounts shall be determined in accordance with subsection 4 of this  
15 section;

16 (3) "Major financial obligations", a consumer's housing expense; required  
17 payments under debt obligations including, but not limited to, outstanding covered loans;  
18 child support obligations; and alimony obligations;

19 (4) "National consumer report", a consumer report, as defined under Section  
20 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), obtained from a consumer  
21 reporting agency that compiles and maintains files on consumers on a nationwide basis,  
22 as defined under Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p);

23 (5) "Net income", the total amount that a consumer receives after the payer deducts  
24 amounts for taxes, other obligations, and voluntary contributions, but before deductions

25 of any amounts for payments under a prospective covered short-term loan or for any  
26 major financial obligation, provided that the lender may include in the consumer's net  
27 income the amount of any income of another person to which the consumer has a  
28 reasonable expectation of access;

29 (6) "Payments under the covered short-term loan", the combined dollar amount  
30 payable by the consumer at a particular time following consummation in connection with  
31 the covered short-term loan, assuming that the consumer has made preceding required  
32 payments and in the absence of any affirmative act by the consumer to extend or  
33 restructure the repayment schedule or to suspend, cancel, or delay payment for any  
34 product, service, or membership provided in connection with the loan. "Payments under  
35 the covered short-term loan" shall include all principal, interest, charges, and fees. A line  
36 of credit is calculated assuming that:

37 (a) The consumer shall utilize the full amount of credit under the covered  
38 short-term loan as soon as the credit is available to the consumer; and

39 (b) The consumer shall make only minimum required payments under the covered  
40 short-term loan for as long as permitted under the loan agreement;

41 (7) "Relevant monthly period", the calendar month in which the highest sum of  
42 payments is due under the covered short-term loan;

43 (8) "Residual income", the sum of net income that the lender projects the consumer  
44 will receive during the relevant monthly period minus the sum of the amounts that the  
45 lender projects will be payable by the consumer for major financial obligations during the  
46 relevant monthly period and payments under the covered short-term loan during the  
47 relevant monthly period, all of such projected amounts shall be determined in accordance  
48 with subsection 4 of this section.

49 2. (1) A lender shall not make a covered short-term loan or increase the credit  
50 available under a covered short-term loan unless the lender first makes a reasonable  
51 determination that the consumer will have the ability to repay the loan according to its  
52 terms.

53 (2) For a covered short-term loan that is a line of credit, a lender shall not permit  
54 a consumer to obtain an advance under the line of credit more than ninety days after the  
55 date of a reasonable determination of the consumer's ability to repay unless the lender first  
56 makes a new determination that the consumer will have the ability to repay the covered  
57 short-term loan according to its terms.

58 3. A lender's determination of a consumer's ability to repay a covered short-term  
59 loan is reasonable only if either:

60           **(1) Based on the calculation of the consumer's debt-to-income ratio for the relevant**  
61 **monthly period and the estimates of the consumer's basic living expenses for the relevant**  
62 **monthly period, the lender reasonably concludes that the consumer can make payments**  
63 **for major financial obligations, make all payments under the loan, and meet basic living**  
64 **expenses during the shorter of either the term of the loan or the period ending forty-five**  
65 **days after consummation of the loan and during the thirty days after making the highest**  
66 **payment under the loan; or**

67           **(2) Based on the calculation of the consumer's residual income for the relevant**  
68 **monthly period and the estimates of the consumer's basic living expenses for the relevant**  
69 **monthly period, the lender reasonably concludes that the consumer can make payments**  
70 **for major financial obligations, make all payments under the loan, and meet basic living**  
71 **expenses during the shorter of either the term of the loan or the period ending forty-five**  
72 **days after consummation of the loan and during the thirty days after making the highest**  
73 **payment under the loan.**

74           **4. (1) To make a reasonable determination, a lender shall obtain the consumer's**  
75 **written statement in accordance with subdivision (2) of this subsection, obtain verification**  
76 **evidence as reasonably necessary, assess information about rental housing expense as**  
77 **required under subdivision (3) of this subsection, and use those sources of information to**  
78 **make a reasonable projection of the amount of a consumer's net income and payments for**  
79 **major financial obligations during the relevant monthly period. The lender shall consider**  
80 **major financial obligations that are listed in a consumer's written statement even if the**  
81 **obligations cannot be verified. To be reasonable, a projection of the amount of net income**  
82 **or payments for major financial obligations shall be based on a consumer's written**  
83 **statement to the extent the stated amounts are reasonably verified. For verification, the**  
84 **lender may reasonably consider other reliable evidence the lender obtains from or about**  
85 **the consumer, including any explanations the lender obtains from the consumer.**

86           **(2) A lender shall obtain a consumer's written statement of:**

87           **(a) The amount of the consumer's net income, which may include the amount of**  
88 **any income of another person to which the consumer has a reasonable expectation of**  
89 **access; and**

90           **(b) The amount of payments required for the consumer's major financial**  
91 **obligations.**

92           **(3) For a consumer's housing expense other than a payment for a debt obligation**  
93 **that appears on a national consumer report, the lender may reasonably rely on the**  
94 **consumer's written statement under subdivision (2) of this section.**

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 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]~~ **thirty-five** percent of the ~~[initial]~~ loan amount on any single loan  
16 authorized pursuant to this section for the entire term of that loan ~~[and all renewals authorized~~  
17 ~~by section 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. 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. 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. 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. A lender shall not use a device or agreement that would have the effect of charging  
47 or collecting more fees, charges, or interest than allowed by this section, including, but not  
48 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 10. **A licensee shall not threaten, or cause to be instigated, criminal proceedings**  
55 **against a borrower if a check given as security for a loan is dishonored. In addition to any**  
56 **other remedies available by law, a licensee that knowingly violates this prohibition shall**  
57 **pay the affected borrower three times the amount of the dishonored check. However, this**  
58 **section shall not apply if the person's account on which the instrument was written was**  
59 **closed by the consumer before the agreed-upon date of negotiation or the consumer**  
60 **stopped payment of the check.**

61 11. **In collecting or attempting to collect a loan made under this section, a licensee**  
62 **shall comply with the restrictions and prohibitions applicable to creditors contained in the**  
63 **Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., regarding harassment**  
64 **or abuse, false or misleading misrepresentations, and unfair practices in collections.**

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

408.506. The division of finance shall report to the general assembly beginning on  
2 January 1, 2003, and on the first day of January every [other] year thereafter, the number of  
3 licenses issued by the director pursuant to section 408.500, the number of loans issued by said  
4 lenders, the average face value of such loans, the average number of times said loans are  
5 renewed, the number of said loans that are defaulted on an annual basis, and the number and



6 nature of complaints made to the director by customers on such licensees and the disposition of  
7 such complaints. Such report shall also include the average interest and fees charged and  
8 collected by lenders on such loans, and a comparison of such with similar small loan lenders  
9 from adjoining states.

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