

SECOND REGULAR SESSION

HOUSE BILL NO. 1438

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HELMS.

3236H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 408.500 and 408.505, RSMo, and to enact in lieu thereof two new sections relating to unsecured loans of five hundred dollars or less, 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Section A. Sections 408.500 and 408.505, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 408.500 and 408.505, to read as follows: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. 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 section shall be void. Any person, firm or corporation who receives or imposes a fee or charge in violation of this section shall be guilty of a class A misdemeanor.

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

24

NOTICE:

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

27 5. The ~~[lender]~~ **licensee** shall provide the borrower with a notice in substantially the
28 following form set forth in at least ten-point bold type, and receipt thereof shall be acknowledged
29 by signature of the borrower:

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

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

34 **6. The licensee shall provide the borrower with a notice of the borrower's right to**
35 **contact the division of finance regarding the licensee. The notice shall include the current**
36 **contact information for the division of finance, including a current phone number, email**
37 **address, and website address.**

38 7. The ~~[lender shall]~~ **licensee may** renew the loan upon the borrower's written request
39 and the payment of any interest and fees due at the time of such renewal; however, upon the first
40 renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce
41 the principal amount of the loan by not less than five percent of the original amount of the loan
42 until such loan is paid in full. However, no loan may be renewed more than ~~[six]~~ **two** times. **A**
43 **licensee shall permit a consumer to use an extended payment plan (EPP) as provided under**
44 **this subsection. A borrower may pay any outstanding loan under this section from any**
45 **licensee by means of 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**
47 **twelve-month period with an individual licensee;**

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 equal**
50 **installments. The dates of the installments shall coincide with the dates the borrower**
51 **receives a paycheck or other regular income. Interest and fees shall not accrue on the**
52 **indebtedness during the term of the EPP. The borrower may prepay an EPP in full at any**

53 **time without penalty. If the borrower fails to pay the amount owed under the EPP when**
54 **due, the licensee may immediately accelerate the unpaid loan balance; and**

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

58

59 **A borrower may invoke an EPP before the close of business on the day the borrower's loan**
60 **balance is due by returning to the office where he or she obtained the loan or by using the**
61 **method the borrower used originally to obtain the loan. To invoke the EPP, a borrower**
62 **shall sign an amendment to the original agreement reflecting the new payment schedule.**
63 **Every licensee shall conspicuously post in the lobby of the office, in at least fourteen-point**
64 **bold type, a notice that the borrower may participate in an EPP and that brochures are**
65 **available at the counter containing terms and conditions of the EPP program. A licensee**
66 **shall comply with the provisions of subsection 10 of section 408.505 with regard to**
67 **collection practices on the EPP.**

68 ~~[7-]~~ **8.** When making or negotiating loans, a licensee shall consider the financial ability
69 of the borrower to reasonably repay the loan in the time and manner specified in the loan
70 contract. All records shall be retained at least two years.

71 ~~[8-]~~ **9.** A licensee who ceases business pursuant to this section must notify the director
72 to request an examination of all records within ten business days prior to cessation. All records
73 must be retained at least two years.

74 ~~[9-]~~ **10.** Any lender licensed pursuant to this section who fails, refuses or neglects to
75 comply with the provisions of this section, or any laws relating to consumer loans or commits
76 any criminal act may have its license suspended or revoked by the director of finance after a
77 hearing before the director on an order of the director to show cause why such order of
78 suspension or revocation should not be entered specifying the grounds therefor which shall be
79 served on the licensee at least ten days prior to the hearing.

80 ~~[10-]~~ **11.** Whenever it shall appear to the director that any lender licensed pursuant to this
81 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions
82 of this section, or any laws relating to consumer loans, the director may issue an order to cease
83 and desist which order may be enforceable by a civil penalty of not more than one thousand
84 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall
85 be assessed and collected by the director. In determining the amount of the penalty, the director
86 shall take into account the appropriateness of the penalty with respect to the gravity of the
87 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 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. In collecting or attempting to collect a loan made pursuant to this section, a**
55 **licensee shall comply with the restrictions and prohibitions applicable to creditors**
56 **contained in the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692, et seq.,**
57 **regarding harassment or abuse, false or misleading representations, and unfair practices**
58 **in collections.**

59 **11.** The provisions of this section shall only apply to entities subject to the provisions
60 of section 408.500 and this section.

✓