

FIRST REGULAR SESSION

HOUSE BILL NO. 890

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FRANZ (Sponsor), FUNDERBURK, TILLEY, CARTER,
McDONALD, TALBOY AND GOSEN (Co-sponsors).

1947L.011

D. ADAM CRUMBLISS, Chief Clerk

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 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Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 408.500, 408.505, 408.506, and
3 408.507, to read as follows:

408.500. 1. Lenders, other than banks, trust companies, credit unions, savings banks and
2 savings and loan companies, in the business of making unsecured loans of five hundred dollars
3 or less shall obtain a license from the director of the division of finance. An annual license fee
4 of three hundred dollars per location shall be required. The license year shall commence on
5 January first each year and the license fee may be prorated for expired months. The director may
6 establish a biennial licensing arrangement but in no case shall the fees be payable for more than
7 one year at a time. The provisions of this section shall not apply to pawnbroker loans, consumer
8 credit loans as authorized under chapter 367, nor to a check accepted and deposited or cashed
9 by the payee business on the same or the following business day. The disclosures required by
10 the federal Truth in Lending Act and regulation Z shall be provided on any loan, renewal or
11 extension made pursuant to this section and the loan, renewal or extension documents shall be
12 signed by the borrower.

13 2. Entities making loans pursuant to this section shall contract for and receive simple
14 interest and fees in accordance with sections 408.100 and 408.140. Any contract evidencing any

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 fee or charge of any kind whatsoever, except for bona fide clerical errors, in violation of this
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, **including**
19 **any costs associated with return of checks**, which include court costs and reasonable attorneys
20 fees, awarded by the court in suit to recover on a bad check or breach of contract shall not be
21 considered as a fee or charge for purposes of this section.

22 4. Lenders licensed pursuant to this section shall conspicuously post in the lobby of the
23 office, in at least fourteen-point bold type, the maximum annual percentage rates **and the fee in**
24 **terms of dollars charged per one hundred dollars loaned** such licensee is currently charging
25 and the statement: NOTICE:

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

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

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

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

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

42 7. **A borrower may pay any outstanding unsecured loan of five hundred dollars or**
43 **less from any licensee by means of an extended payment plan containing, at a minimum,**
44 **the following provisions:**

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

47 (2) **To enter into an extended payment plan with respect to an unsecured loan of**
48 **five hundred dollars or less, the borrower shall agree in a written and signed document to**
49 **repay the amount owed in four equal installments or less over an aggregate term of sixty**
50 **days or less. Interest shall not accrue on the indebtedness during the term of the extended**

51 **payment plan. The borrower may prepay an extended payment plan in full at any time**
52 **without penalty. If the borrower fails to pay the amount owed under the extended**
53 **payment plan when due, then the licensee may immediately accelerate the unpaid loan**
54 **balance;**

55 **(3) If the borrower enters into an extended payment plan, then the licensee shall**
56 **not make an unsecured loan of five hundred dollars or less to the borrower until the**
57 **borrower satisfies in full the balance of the loan under the terms of the extended payment**
58 **plan;**

59 **(4) The licensee shall conspicuously post in the lobby of the office, in at least**
60 **fourteen-point bold type, a notice that the borrower may participate in an extended**
61 **payment plan and that brochures are available at the counter containing the terms and**
62 **conditions of the extended payment plan program;**

63 **(5) A borrower shall invoke the extended payment plan by close of business on the**
64 **day before the due date by returning to the office where he or she obtained the loan or by**
65 **using whatever method the borrower used originally to obtain the loan. To invoke the**
66 **extended payment plan, a borrower shall sign an amendment to the original agreement**
67 **reflecting the new payment schedule.**

68 **8.** When making or negotiating loans, a licensee shall consider the financial ability of
69 the borrower to reasonably repay the loan in the time and manner specified in the loan contract.
70 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] **sixty** 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.] **No lender shall make a loan to a borrower until the next business day
23 after a borrower has paid or otherwise satisfied in full a previous unsecured loan of five
24 hundred dollars or less.**

25 5. Except as provided in subsection 3 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. 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 if at the time the payee accepts a check or similar sight order for the payment of money,
43 he or she does so with the understanding that the payee will not present it for payment until later
44 and the payee knows or has reason to believe that there are insufficient funds on deposit with the
45 drawee at the time of acceptance. However, this section shall not apply if the person's account
46 on which the instrument was written was closed by the consumer before the agreed-upon date
47 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. A licensee shall not threaten, or cause to be instigated, criminal proceedings**
57 **against a borrower if a check given as security for a loan is dishonored. In addition to any**
58 **other remedies available at law, a licensee that knowingly violates this prohibition shall pay**
59 **the affected borrower three times the amount of the dishonored check. However, this**
60 **subsection shall not apply if the person's account on which the instrument was written was**
61 **closed by the borrower before the agreed-upon date of negotiation or the borrower has**
62 **stopped payment on the check.**

63 **11. In collecting or attempting to collect an unsecured loan of five hundred dollars**
64 **or less, a licensee shall comply with the restrictions and prohibitions applicable to debt**
65 **collectors contained in the Fair Debt Collection Practices Act (15 U.S.C. 1692, et seq.)**
66 **regarding harassment or abuse, false or misleading misrepresentations, and unfair**
67 **practices in collections.**

68 **12.** The provisions of this section shall only apply to entities subject to the provisions
69 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.

**408.507. 1. There is hereby established a pilot program within the division of
2 finance within the department of insurance, financial institutions and professional
3 registration which shall be administered by the division to develop a real-time statewide
4 compliance system for payday lenders licensed under section 408.500 to record each
5 payday loan transaction.**

6 2. The division shall be charged with the following:

**7 (1) Adopting rules governing the creation, structure, and use of the compliance
8 system which shall include a real-time customer eligibility verification charge as necessary
9 to maintain the system;**

**10 (2) Establishing requirements for the retention, archiving and purging of
11 information entered into and stored by the system;**

12 (3) Fully implementing the system by September 1, 2011; and

**13 (4) Issuing a preliminary report to the general assembly by March 1, 2012, and a
14 final report by June 1, 2012, documenting the usefulness of the system and the general
15 compliance of licensees.**

**16 3. Any rule or portion of a rule, as that term is defined in section 536.010 that is
17 created under the authority delegated in this section shall become effective only if it
18 complies with and is subject to all of the provisions of chapter 536, and, if applicable,
19 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
20 vested with the general assembly pursuant to chapter 536, to review, to delay the effective
21 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
22 grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,
23 shall be invalid and void.**

**24 4. The provisions of this program authorized under this section shall sunset on
25 August 31, 2012.**