

FIRST REGULAR SESSION

# HOUSE BILL NO. 656

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BRANDOM (Sponsor), SOLON, HAMPTON, LAMPE, REDMON, McNARY, DIECKHAUS, RICHARDSON, LONG, COOKSON, TILLEY, ZERR, MEADOWS, CARTER, HODGES, COLONA, HUMMEL, RIZZO, FALLERT, JONES (117), SMITH (150), WELLS, CONWAY (27), BLACK AND DIEHL (Co-sponsors).

0602L.03I

D. ADAM CRUMBLISS, 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 three new sections relating to unsecured loans of five hundred dollars or less, with existing penalty provisions.

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Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 408.500, 408.505, and 408.506, to read as follows: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

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.

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  
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:

26 NOTICE:

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

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

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

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

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

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.

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