

FIRST REGULAR SESSION

# HOUSE BILL NO. 935

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MAYFIELD (Sponsor), MITTEN, ENGLISH, ANDERS,  
RUNIONS AND CARPENTER (Co-sponsors).

2114H.01I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 367.515, 408.100, 408.500, 408.505, and 408.510, RSMo, and to enact in lieu thereof six new sections relating to consumer credit interest rates, with a penalty provision and a referendum clause.

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

Section A. Sections 367.515, 408.100, 408.500, 408.505, and 408.510, RSMo, are  
2 repealed and six new sections enacted in lieu thereof, to be known as sections 367.105, 367.515,  
3 408.100, 408.500, 408.505, and 408.510, to read as follows:

**367.105. Any person making or offering a consumer credit loan shall contract for  
2 and receive interest and fees in accordance with sections 408.100, 408.140, and 408.170 and  
3 shall be subject to all provisions of such sections.**

367.515. A title lender shall contract for and receive simple interest and fees in  
2 accordance with sections 408.100 and 408.140 **and shall be subject to all provisions of such  
3 sections.**

408.100. **1. It is the intent of the people of Missouri to prevent lenders, such as  
2 those who offer what are commonly known as payday loans, car title loans, and installment  
3 loans, from charging excessive fees and interest rates by:**

**(1) Reducing the annual percentage rate for payday, title, installment, and other  
5 high-cost consumer credit and small loans from triple-digit interest rates to thirty-six  
6 percent per year;**

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.

7           **(2) Extending to veterans and others the same thirty-six percent rate limit in place**  
8 **for payday and title loans to active military families as enacted by the 109th United States**  
9 **Congress in 10 U.S.C. Section 987; and**

10           **(3) Preserving fair lending by prohibiting lenders from structuring other**  
11 **transactions to avoid the rate limit through subterfuge.**

12           **2. This section shall apply to all loans which are not made as permitted by other laws of**  
13 **this state except that it shall not apply to loans which are secured by a lien on real estate,**  
14 **nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations. On**  
15 **any loan subject to this section, any person, firm, or corporation may charge, contract for and**  
16 **receive interest on the unpaid principal balance at rates agreed to by the parties provided that**  
17 **the interest, fees, and finance charges shall not exceed an annual percentage rate of thirty-**  
18 **six percent.**

19           **3. A person shall not engage in any device or subterfuge intended to evade the**  
20 **requirements of this chapter through any method including, but not limited to, mail,**  
21 **telephone, internet, or any electronic means, including:**

22           **(1) Offering, making, assisting a borrower to obtain, or brokering a loan at an**  
23 **annual percentage rate prohibited by this section, making loans disguised as personal**  
24 **property sales and leaseback transactions, or disguising loan proceeds as cash rebates for**  
25 **the pretextual installment sale of goods or services;**

26           **(2) Making, assisting a borrower to obtain, or brokering an offer of credit, in whole**  
27 **or in part, from a third party, or acting as an agent for a third party, regardless of whether**  
28 **said third party is exempt from licensing or whether approval, acceptance, or ratification**  
29 **by said party is necessary to create a legal obligation for the third party; or**

30           **(3) Charging any application fee for the provision of credit or any fee for**  
31 **participation in a credit plan, if such a fee is authorized under any applicable section of**  
32 **Missouri law, without including the fees in the calculation of the annual percentage rate**  
33 **of the credit in accordance with the allowable rate set forth in this section.**

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, **commonly known as payday lenders**, shall obtain a license from the director of the  
4 division of finance. An annual license fee of three hundred dollars per location shall be required.  
5 The license year shall commence on January first each year and the license fee may be prorated  
6 for expired months. The director may establish a biennial licensing arrangement but in no case  
7 shall the fees be payable for more than one year at a time. The provisions of this section shall  
8 not apply to pawnbroker loans, consumer credit loans as authorized under chapter 367, nor to a  
9 check accepted and deposited or cashed by the payee business on the same or the following

10 business day. The disclosures required by the federal Truth in Lending Act and regulation Z  
11 shall be provided on any loan, renewal or extension made pursuant to this section and the loan,  
12 renewal or extension documents shall be 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 **and shall be subject to all**  
15 **provisions of such sections.** Any contract evidencing any fee or charge of any kind whatsoever,  
16 except for bona fide clerical errors, in violation of this section shall be void. Any person, firm  
17 or corporation who receives or imposes a fee or charge in violation of this section shall be guilty  
18 of a class A misdemeanor.

19 3. Notwithstanding any other law to the contrary, cost of collection expenses, which  
20 include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad  
21 check or breach of contract shall not be 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 such licensee  
24 is currently charging and the statement:

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

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

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

46           9. Any lender licensed pursuant to this section who fails, refuses or neglects to comply  
47 with the provisions of this section, or any laws relating to consumer loans or commits any  
48 criminal act may have its license suspended or revoked by the director of finance after a hearing  
49 before the director on an order of the director to show cause why such order of suspension or  
50 revocation should not be entered specifying the grounds therefor which shall be served on the  
51 licensee at least ten days prior to the hearing.

52           10. Whenever it shall appear to the director that any lender licensed pursuant to this  
53 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions  
54 of this section, or any laws relating to consumer loans, the director may issue an order to cease  
55 and desist which order may be enforceable by a civil penalty of not more than one thousand  
56 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall  
57 be assessed and collected by the director. In determining the amount of the penalty, the director  
58 shall take into account the appropriateness of the penalty with respect to the gravity of the  
59 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 **and shall be subject to all provisions of such sections.** No other charges of any  
13 nature shall be permitted except as provided by this section, including any charges for cashing  
14 the loan proceeds if they are given in check form. [However, no borrower shall be required to  
15 pay a total amount of accumulated interest and fees in excess of seventy-five percent of the initial  
16 loan amount on any single loan authorized pursuant to this section for the entire term of that loan  
17 and all renewals authorized 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. The provisions of this section shall only apply to entities subject to the provisions  
55 of section 408.500 and this section.

          408.510. Notwithstanding any other law to the contrary, the phrase "consumer  
2 installment loans" means secured or unsecured loans of any amount and payable in not less than  
3 four substantially equal installments over a period of not less than one hundred twenty days. The

4 phrase "consumer installment lender" means a person licensed to make consumer installment  
5 loans. A consumer installment lender shall be licensed in the same manner and upon the same  
6 terms as a lender making consumer credit loans. Such consumer installment lenders shall  
7 contract for and receive interest and fees in accordance with sections 408.100, 408.140, and  
8 408.170 **and shall be subject to all provisions of such sections.** Consumer installment lenders  
9 shall be subject to the provisions of sections 408.551 to 408.562.

Section B. This act is hereby submitted to the qualified voters of this state for approval  
2 or rejection at an election which is hereby ordered and which shall be held and conducted on the  
3 Tuesday immediately following the first Monday in November, 2013, or at a special election to  
4 be called by the governor for that purpose, pursuant to the laws and constitutional provisions of  
5 this state applicable to general elections and the submission of referendum measures by initiative  
6 petition, and it shall become effective when approved by a majority of the votes cast thereon at  
7 such election and not otherwise.

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