FIRST REGULAR SESSION

HOUSE BILL NO. 1200

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CARPENTER.

2094H.01I DANA RADEMAN MILLER, 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, with a penalty provision.

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Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 408.500, 408.503, 408.505, and 408.506, to read as follows: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

3. Notwithstanding any other law to the contrary, cost of collection expenses, which include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad check or breach of contract shall not be considered as a fee or charge for purposes of this section. Notwithstanding any other law to the contrary, any costs associated with the return of checks shall not be considered as a fee or charge for the purposes of this section.

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

   NOTICE:

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

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

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

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

6. [The lender shall renew the loan upon the borrower's written request and the payment of any interest and fees due at the time of such renewal; however, upon the first renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal amount of the loan by not less than five percent of the original amount of the loan until such loan is paid in full. However, no loan may be renewed more than six times.] No lender licensed under this section shall renew or extend a loan, except that a lender shall permit a consumer to use an extended payment plan (EPP) as provided under this subsection. A borrower may pay any outstanding loan under this section from any licensee by means of an EPP containing, at a minimum, the following provisions:

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

   (2) To enter into an EPP with respect to a loan under this section, the borrower shall agree in a written and signed document to repay the amount owed in four or fewer equal installments over an aggregate term of sixty days or less if the borrower receives bimonthly paychecks or an aggregate term of one hundred twenty days or less if the
borrower receives monthly paychecks. Such installments shall coincide with the dates the borrower expects to earn regular income. Interest shall not accrue on the indebtedness during the term of the EPP. The borrower may prepay an EPP in full at any time without penalty. If the borrower fails to pay the amount owed under the EPP when due, then the licensee may immediately accelerate the unpaid loan balance; and

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

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

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

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

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

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

11. Any lender licensed pursuant to this section who fails, refuses or neglects to comply 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
93 [¶10] 12. Whenever it shall appear to the director that any lender licensed pursuant to this
94 section is failing, refusing or neglecting to make a good faith effort to comply with the provisions
95 of this section, or any laws relating to consumer loans, the director may issue an order to cease
96 and desist which order may be enforceable by a civil penalty of not more than one thousand
97 dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall
98 be assessed and collected by the director. In determining the amount of the penalty, the director
99 shall take into account the appropriateness of the penalty with respect to the gravity of the
100 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 all of which projected amounts shall be determined in accordance with subsection 4 of this
14 section;
15 (3) "Major financial obligations", a consumer’s housing expense; required
16 payments under debt obligations including, but not limited to, outstanding covered loans;
17 child support obligations; and alimony obligations;
18 (4) "National consumer report", a consumer report, as defined under Section
19 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), obtained from a consumer
20 reporting agency that compiles and maintains files on consumers on a nationwide basis,
21 as defined under Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p);
22 (5) "Net income", the total amount that a consumer receives after the payer deducts
23 amounts for taxes, other obligations, and voluntary contributions, but before deductions
of any amounts for payments under a prospective covered short-term loan or for any major financial obligation, provided that the lender may include in the consumer’s net income the amount of any income of another person to which the consumer has a reasonable expectation of access;

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

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

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

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

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

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

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

3. A lender’s determination of a consumer’s ability to repay a covered short-term loan is reasonable only if either:
(1) Based on the calculation of the consumer’s debt-to-income ratio for the relevant monthly period and the estimates of the consumer’s basic living expenses for the relevant monthly period, the lender reasonably concludes that the consumer can make payments for major financial obligations, make all payments under the loan, and meet basic living expenses during the shorter of either the term of the loan or the period ending forty-five days after consummation of the loan and during the thirty days after making the highest payment under the loan; or

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

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

(2) A lender shall obtain a consumer’s written statement of:

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

(b) The amount of payments required for the consumer’s major financial obligations.

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

408.505. 1. This section shall apply to:
(1) Unsecured loans made by lenders licensed or who should have been licensed pursuant to section 408.500;

(2) Any person that the Missouri division of finance determines that has entered into a transaction that, in substance, is a disguised loan; and

(3) Any person that the Missouri division of finance determines has engaged in subterfuge for the purpose of avoiding the provisions of this section.

2. All loans made pursuant to this section and section 408.500, shall have a minimum term of fourteen days and a maximum term of thirty-one days, regardless of whether the loan is an original loan or renewed loan.

3. A lender may only charge simple interest and fees in accordance with sections 408.100 and 408.140. No other charges of any nature shall be permitted except as provided by this section, including any charges for cashing the loan proceeds if they are given in check form. However, no borrower shall be required to pay a total amount of accumulated interest and fees in excess of seventy-five thirty-five percent of the initial loan amount on any single loan authorized pursuant to this section for the entire term of that loan and all renewals authorized by section 408.500 and this section.

4. A loan made pursuant to the provisions of section 408.500 and this section shall be deemed completed and shall not be considered a renewed loan when the lender presents the instrument for payment or the payee redeems the instrument by paying the full amount of the instrument to the lender. Once the payee has completed the loan, the payee may enter into a new loan with a lender.

5. Except as provided in subsection 3 of this section, no loan made pursuant to this section shall be repaid by the proceeds of another loan made by the same lender or any person or entity affiliated with the lender. A lender, person or entity affiliated with the lender shall not have more than five hundred dollars in loans made pursuant to section 408.500 and this section outstanding to the same borrower at any one time. A lender complies with this subsection if:

(1) The consumer certifies in writing that the consumer does not have any outstanding small loans with the lender which in the aggregate exceeds five hundred dollars, and is not repaying the loan with the proceeds of another loan made by the same lender; and

(2) The lender does not know, or have reason to believe, that the consumer's written certification is false.

6. On a consumer loan transaction where cash is advanced in exchange for a personal check, a return check charge may be charged in the amounts provided by sections 408.653 and 408.654, as applicable.
7. No state or public employee or official, including a judge of any court of this state, shall enforce the provisions of any contract for payment of money subject to this section which violates the provisions of section 408.500 and this section.

8. A person does not commit the crime of passing a bad check pursuant to section 570.120 if at the time the payee accepts a check or similar sight order for the payment of money, he or she does so with the understanding that the payee will not present it for payment until later and the payee knows or has reason to believe that there are insufficient funds on deposit with the drawee at the time of acceptance. However, this section shall not apply if the person's account on which the instrument was written was closed by the consumer before the agreed-upon date of negotiation or the consumer has stopped payment on the check.

9. A lender shall not use a device or agreement that would have the effect of charging or collecting more fees, charges, or interest than allowed by this section, including, but not limited to:

   (1) Entering into a different type of transaction;
   (2) Entering into a sales lease back arrangement;
   (3) Catalog sales;
   (4) Entering into any other transaction with the consumer that is designed to evade the applicability of this section.

10. A licensee shall not threaten, or cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan is dishonored. In addition to any other remedies available by law, a licensee that knowingly violates this prohibition shall pay the affected borrower three times the amount of the dishonored check. However, this section shall not apply if the person's account on which the instrument was written was closed by the consumer before the agreed-upon date of negotiation or the consumer stopped payment of the check.

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

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

408.506. The division of finance shall report to the general assembly beginning on January 1, 2003, and on the first day of January every [other] year thereafter, the number of licenses issued by the director pursuant to section 408.500, the number of loans issued by said lenders, the average face value of such loans, the average number of times said loans are renewed, the number of said loans that are defaulted on an annual basis, and the number and
nature of complaints made to the director by customers on such licensees and the disposition of
such complaints. Such report shall also include the average interest and fees charged and
collected by lenders on such loans, and a comparison of such with similar small loan lenders
from adjoining states.