SECOND REGULAR SESSION

SENATE BILL NO. 975

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR DAYS.

Read 1st time January 31, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4754S.03I

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 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Section A. Sections 408.500, 408.505, and 408.506, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 408.500, 408.505, and 408.506, to read as follows: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. **Notwithstanding any other provision of law to the contrary, all** 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, RSMo, 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.

2. **Subject to the limitations in subsection 3 of section 408.505,** entities making loans pursuant to this section shall contract for and receive

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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.

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.

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 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**]** **No** lender shall renew **[**the**]** **a** 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**] made under this section and section 408.505**.

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. 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 criminal act may have its license suspended or revoked by the director of finance after a hearing before the director on an order of the director to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the licensee at least ten days prior to the hearing.

10. Whenever it shall appear to the director **or the attorney general** that any lender **[**licensed pursuant to this section**]** **making unsecured loans of five hundred dollars or less** is failing, refusing or neglecting to make a good faith effort to comply with the provisions of **[**this section**]** **section 408.505**, or any laws relating to consumer loans, the director **or the attorney general** may issue an order to cease and desist which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director**[**. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require**]** **or the attorney general on behalf of the director**.

11. In addition to the remedies provided for in subsection 10 of this section, whenever it shall appear to the director or the attorney general that any lender making unsecured loans of five hundred dollars or less is failing, refusing, or neglecting to make a good faith effort to comply with the provisions of sections 408.500 to 408.506 or any laws relating to consumer loans the attorney general may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, or course of business and to enforce compliance with sections 408.500 to 408.506. In an action under this section and on a proper showing the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Impose a civil penalty up to one thousand dollars per day for each day that the neglect, failure, or refusal continues;

(3) Impose an order of rescission, restitution, or disgorgement directed to a person or entity that has engaged in an act, practice, or course of business constituting a violation of sections 400.500 to 400.506

or any laws relating to consumer loans;

(4) Order such other relief as the court deems appropriate.

408.505. 1. This section shall apply to:

(1) Unsecured loans **of five hundred dollars or less** made by lenders **whether** licensed or **[**who should have been licensed**] not** 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 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.**] A lender may charge only the following amounts with respect to loans subject to this section:**

(1) Not more than fifteen dollars per one hundred dollars of principal amount of the loan for the first thirty days of the loan; and

(2) Not more than three percent per month of the outstanding loan balance for any loan continued or extended after the thirtieth day after the original date of the loan whether made by the original lender or offered, made, or arranged by any person or entity on behalf of the original lender or any person or entity affiliated with the lender.

No other charges of any nature shall be permitted except as provided by this section, including but not limited to any charges for cashing the loan proceeds if they are given in check form.

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.**]** **5.** 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.**]** **6.** 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.**]** **7.** A person does not commit the crime of passing a bad check pursuant to section 570.120, RSMo, 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.**]** **8.** 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.] **9.** The provisions of this section shall [only] apply to entities [subject to] **making unsecured loans of five hundred dollars or less regardless of whether licensure is required under** 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.

✓