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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 182
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Hillyer and Barhorst

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SUMMARY

- Provides that a lender under the Small Loan Law, Short-Term Loan Law, General Loan Law, Consumer Installment Loan Act, and Insurance Premium Finance Company Act that corrects a bona fide error within a reasonable time will be considered not to have violated the law.
- Increases the maximum interest rate a lender under the Consumer Installment Act (CILA) can charge and receive on a loan, from 25% to 36% per year.
- Permits, instead of requires, a CILA lender to apply payments by the borrower for an interest-bearing loan to unpaid charges first, then to the interest, and to the principal balance last.
- Permits a CILA lender to convert a precomputed loan to an interest-bearing loan, if the precomputed loan has been accelerated, and after a refund is provided to the borrower.
- Permits a CILA lender to charge and collect a fee for a loan that is refinanced or renewed.
- Removes the condition that, when a CILA lender pursues legal action related to a loan, attorney's fees can be collected only if the lender becomes entitled to it by law.

DETAILED ANALYSIS

General overview

Ohio law regulates nondepository consumer loans that are not secured by residential real estate primarily under Revised Code Chapter 1321. Nondepository lenders are companies that are not banks or credit unions. Chapter 1321 regulates loan terms and provides licenses

and registrations to lenders issued by the Superintendent of Financial institutions under the Small Loan Law,¹ Short-Term Loan Law,² General Loan Law,³ Consumer Installment Loan Act (CILA),⁴ and Insurance Premium Finance Company Act.⁵

The bill provides legal protections to lenders regulated under these laws for bona fide errors made in connection with a loan and makes various changes to CILA.

Bona fide errors

The bill provides legal protections to lenders that make a bona fide error relating to a loan. The bill does not define bona fide error, but the term typically refers to an unintentional mistake or oversight that may be corrected promptly to avoid legal action.⁶ The bill specifies that a lender under the Small Loan Law, Short-Term Loan Law, General Loan Law, CILA, or the Insurance Premium Finance Company Law that makes a bona fide error in connection with a loan that would otherwise constitute a violation of R.C. Chapter 1321 is not considered a violation of that Chapter if the lender corrects the error within a reasonable time. Any correction must include (1) crediting a loan account with the amount of the overcharge plus applicable interest on the overcharge, or (2) if the account is closed without a remaining balance, returning to the customer the amount of any overcharge plus applicable interest on the overcharge.⁷ Under continuing law, similar protections are provided to banks and credit unions.⁸

Consumer Installment Loan Act (CILA)

Under current law, changed in part by the bill, a licensee under CILA is authorized to make loans to borrowers that, among other requirements, are for a term of at least six months, generally require equal monthly payments, are not secured by the borrower's residential property, and have a maximum interest rate of 25% (or 28% for an open-end loan). The bill makes several changes to CILA, which are discussed below.

¹ R.C. 1321.01 to 1321.19, not in the bill (Small Loan Law).

² R.C. 1321.35 to 1321.48, not in the bill (Short-Term Loan Law).

³ R.C. 1321.51 to 1321.60, not in the bill (General Loan Law).

⁴ R.C. 1321.62 to 1321.702 (Consumer Installment Loan Act).

⁵ R.C. 1321.71 to 1321.83, not in the bill (Insurance Premium Finance Company Act).

⁶ [Bona fide error](#), by Will Kenton, January 26, 2022, which is available on the Investopedia website: [Investopedia.com](https://www.investopedia.com).

⁷ R.C. 1321.99(K).

⁸ R.C. 1121.61 and 1733.53, not in the bill.

Interest rate

Under existing law, changed by the bill, a CILA lender can charge up to 25% interest per year on the unpaid principal balance of the loan. The bill increases the allowable interest rate to 36% per year.⁹ The interest rate for open-end loans (28%) remains unchanged under the bill.¹⁰

Interest-bearing loans

CILA loans can be interest-bearing or precomputed. With interest-bearing loans, the interest is added to the loan and is calculated based on the unpaid balance of the loan at the time of the last payment. When a borrower makes a payment, existing law requires each payment from the borrower to pay off the loan to be applied in the following order by the lender:

1. Unpaid charges;
2. Interest;
3. Unpaid principal balance.

The bill removes this requirement, making this order permissive, not mandatory, allowing the lender to apply the payment in any order the lender chooses.¹¹

Precomputed interest loans

The bill also makes a change to loans in which the interest is precomputed. With precomputed interest, the lender determines the amount of the interest the borrower will pay for the entire term of the loan up front and adds that amount to the principal loan amount. The payments are then calculated based on the total loan amount, which includes the principal loan amount and the calculated interest. Under continuing law, if the maturity of the loan is accelerated, meaning the lender demands that the borrower repay all of an outstanding loan if certain requirements are not met, and a judgement is entered, the lender must credit the borrower with same refund as if prepayment in full had been made on the date the judgement is entered. The refund is based on the interest the borrower paid on the loan that was not yet earned by the lender.

The bill adds that in situations where the loan is accelerated, whether a judgement is entered against the borrower or not, after the lender credits the borrower with the refund on the precomputed loan, the lender may convert the loan to an interest-bearing loan with the same interest rate provided in the original loan contract.¹²

⁹ R.C. 1321.68(A).

¹⁰ R.C. 1321.681(C), not in the bill.

¹¹ R.C. 1321.68(C)(1)(c).

¹² R.C. 1321.68(D)(3).

Fees

Refinance fee

Under existing law, a CILA lender is prohibited from charging or collecting a fee from the borrower for renewing, amending, or extending a loan beyond its original terms. This restriction does not apply to loan deferments. The bill eliminates this restriction for loans that are refinanced or renewed.¹³ Therefore, under the bill, a lender may charge and collect a fee for a loan that is refinanced or renewed. The bill continues to prohibit a lender to charge or collect a fee for a loan that is amended or extended beyond its original terms.

Attorney's fees

Under continuing law, a CILA lender can charge and receive costs and disbursements in connection with any suit to collect a loan or any lawful activity to realize on a security interest after default, including reasonable attorney's fees incurred by the lender as a result of the suit or activity. Current law only allows the lender to collect attorney fees when the lender becomes entitled to it by law. The bill eliminates the condition that it must be "entitled by law."¹⁴

Check collection charges

Existing law permits a CILA lender to charge and receive check collection charges of up to \$20 plus any amount passed on from other depository institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason. The bill modernizes this provision by replacing the term "check collection charges" with the broader "returned payment fees." The revised language allows the lender to charge a returned payment fee of \$20 plus any amount passed from other depository institutions or payment processors, including any unpaid electronic fund transfers or electronic payment.¹⁵

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 05-22-23 |

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¹³ R.C. 1321.632.

¹⁴ R.C. 1321.68(G)(1)(a).

¹⁵ R.C. 1321.68(J).