



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 123*

132nd General Assembly
(As Reported by S. Finance)

Reps. Koehler and Ashford, Antonio, Barnes, Boyd, Brown, Clyde, Craig, Fedor, Greenspan, Holmes, Howse, Ingram, Leland, Lepore-Hagan, Lipps, Miller, O'Brien, Patterson, Ramos, Rogers, Ryan, Schuring, Sheehy, K. Smith, Sykes, West, R. Smith

BILL SUMMARY

- Modifies the Short-Term Loan Law with respect to the type of loans a licensee can make under the Law (maximum amount of \$1,000 and maximum duration of one year), the cost of a loan, a borrower's eligibility for a loan, prohibited actions by a licensee, Internet lending, the penalty for unlicensed activity, exemptions from the Law, the statewide common database, and the annual analysis of business conducted under the Law that is published by the Division of Financial Institutions.
 - Prohibits licensees under the Small Loan Law and registrants under the General Loan Law from making loans (1) in the amount of \$1,000 or less or (2) with a duration of one year or less.
 - Prohibits credit services organizations from brokering or performing any other services with respect to an extension of credit that is less than \$5,000, has a repayment term of one year or less, or has an annual percentage rate greater than 28%.
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CONTENT AND OPERATION

Background and overview

Consumer lending regulation in Ohio is governed by various statutes in the Ohio Revised Code. Small-dollar, short-term loans (\$1,000 or less, one year or less) that are

* This analysis was prepared before the report of the Senate Finance Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

not for the sale of goods or services, are unsecured or secured by other than residential property, and in which the lender is not a depository institution or a pawnshop are generally governed by one of three loan laws: the Short-Term Loan Law, Small Loan Law, and the General Loan Law. All of these loan laws are exempt from the Usury Law, which generally caps the interest rate of a loan at 8%.¹ Each loan law requires a separate license, which, if obtained by the lender, allows the lender to enter into a loan transaction with the terms permitted under that particular loan law. The loan laws vary in the permitted loan amount, loan duration, interest rate, loan products, and other features (see "**Comparison table of loan laws**," below).

The bill modifies the Short-Term Loan Law and restricts loans made under the Small Loan Law and General Loan Law to loans of more than \$1,000 with durations of more than one year. In addition, the bill prohibits credit service organizations from brokering or performing any other services in connection with an extension of credit that is (1) \$5,000 or less, (2) has a repayment term of one year or less, or (3) has an annual percentage rate greater than 28%. Credit service organizations are not considered lenders, but under continuing law are permitted to broker or otherwise obtain an extension of credit by a third-party lender for a borrower for a fee.² Therefore, under the bill, a license under the Short-Term Loan Law would be the only type of license available for a lender (of the type described above) that makes small-dollar, short-term loans of \$1,000 or less with a duration of not more than one year.

Short-Term Loan Law

The bill modifies the Short-Term Loan Law (R.C. 1321.35 to 1321.48) relative to:

--The type of short-term loans that can be made by a person licensed under the Law;

--The cost of a loan, including what fees and charges are permissible, the maximum amount of fees and charges that can be imposed, and what constitutes "interest" and "annual percentage rate";

--A borrower's eligibility for a loan;

¹ R.C. 1343.01; loans under the Usury Law do not have limits on loan amount or duration, and security is permitted. Interest is generally capped at 8%, but the parties may agree to a higher rate when: (1) the original amount of the principal exceeds \$100,000, (2) the payment is to a securities broker or dealer for carrying a debit balance in an account that is payable on demand and secured by securities, (3) the loan is secured real estate in certain circumstances, (4) the instrument is payable on demand or in one installment and is not secured by household furnishings or other goods used for personal, family, or household purposes, or (5) the loan is a business loan and certain circumstances apply.

² R.C. 4712.01(C)(1)(b).



- Prohibited actions by a licensee and the penalty for unlicensed activity;
- Lending via the Internet;
- Exemptions from the Law;
- The statewide common database; and
- The annual analysis of business conducted under the Law that must be published by the Division of Financial Institutions.

It should be noted that, at this time, no one is licensed under the Short-Term Loan Law.

Type of loan

As provided by the bill, short-term loans made by a person licensed under the Law (referred to as a "licensee") must meet *all* of the following conditions:

(1) The total amount of the loan does not exceed \$1,000 (rather than \$500, as provided under current law).

(2) The minimum duration of the loan is 91 days and the maximum duration is one year. However, the minimum duration of the loan may be less than 91 days *if* the total monthly payment on the loan does not exceed an amount that is 6% of the borrower's verified *gross* monthly income or 7% of the borrower's verified *net* monthly income, whichever is greater. (Under current law, the duration of a loan cannot be less than 31 days.) The bill provides that, if the duration of a loan is 91 days or greater, the licensee must determine the recommended length of a loan based on the borrower's verified monthly income (in the manner described above), and provide the borrower with a written copy of its recommendation, which is not binding on the borrower.

For these purposes, the bill requires a licensee to make a reasonable attempt to verify the borrower's income prior to initiating the loan. A licensee must obtain from the borrower one or more recent pay stubs or other written evidence of recurring income, such as a bank statement. The written evidence is to include at least one document that, when presented to the licensee, is dated not earlier than 45 days prior to the borrower's initiation of the loan transaction. The bill authorizes the Superintendent of Financial Institutions to adopt rules setting forth any other procedures the Superintendent considers necessary to ensure accurate verification of borrower income.³

³ R.C. 1321.46.

(3) The loan is made pursuant to a written loan contract that sets forth the terms and conditions of the loan, including the total amount of fees and charges, the total amount of each payment and when each payment is due, and the annual percentage rate (largely continuing law), and, under the bill, statements in a minimum font size of ten points that (a) "Electronic payment is optional. You have the right to revoke or remove your authorization for electronic payment at any time" and (b) "You have the right to rescind or cancel this loan by returning the originally contracted loan amount by 5 p.m. of the third business day immediately following the day you enter into this contract." The bill continues to require the contract include a statement warning that the cost of the loan is higher than average, but adds notice that a bank or credit union might be able to offer a similar loan at a lower cost.

(4) The loan is a precomputed loan and is payable in substantially equal installments consisting of principal, fees, and interest combined (added by the bill). "**Precomputed loan**" means a loan in which the debt is a sum comprising the principal amount and the amount of fees and interest computed in advance on the assumption that all scheduled payments will be made when due.

(5) The loan contract may be rescinded or canceled on or before 5 p.m. of the third business day immediately following the day of the loan transaction upon the borrower returning the originally contracted loan amount (added by the bill).

The bill eliminates the requirement that the loan contract include a provision that offers the borrower an optional extended payment plan.⁴

Cost of a loan

Permissible fees and charges

Under the bill, a licensee is permitted to charge and collect *only* the following:

- Interest not exceeding 28% per year (continuing law). Under the bill, the definition of "**interest**" is modified to mean all charges payable directly or indirectly by a borrower to a licensee as a condition to a short-term loan, including fees, service charges, renewal charges, and any ancillary product sold in connection with the loan, but *not* the permitted monthly maintenance fees, loan origination charge, check cashing fee, or check collection charge. Additionally, in the computation of the **annual percentage rate**, the bill requires that all fees and charges, including

⁴ R.C. 1321.35(E), 1321.39, 1321.391, and 1321.46.

interest, the loan origination charge, and the monthly maintenance fees, be included.

- A monthly maintenance fee that does not exceed the lesser of 10% of the originally contracted loan amount or \$30, provided the fee is *not* added to the loan balance on which interest is charged (added by the bill). A monthly maintenance fee cannot be charged, however, if the borrower is on active duty in the U.S. armed forces or is a dependent of that person.
- If the originally contracted loan amount is \$500 or more, a loan origination charge in the amount of 2%, provided the fee is not added to the loan balance on which interest is charged (added by the bill);
- One check collection charge per loan (continuing law);
- If a licensee provides the proceeds of a loan in the form of a check, a fee to cash that check in an amount not exceeding \$10 (added by the bill);
- Damages, costs, and disbursements to which the licensee may become entitled by law in connection with a civil action to collect on the loan after default (continuing law), except that the total amount of damages and costs cannot exceed the originally contracted loan amount (added by the bill).⁵

Cap

Despite the above, under the bill the *total* amount of fees and charges a licensee can collect on a short-term loan cannot exceed 60% of the originally contracted loan amount. When calculating the total loan charges, all charges made in connection with the loan are to be included *except for* (1) the check collection charge, (2) the check cashing fee, and (3) the interest charges on a refinanced loan (see below).⁶

Refund

If a loan is prepaid in full or refinanced prior to the loan's maturity date, the bill requires the licensee to refund to the borrower a prorated portion of the interest, monthly maintenance fees, and all other charges based on a ratio of the number of days

⁵ R.C. 1321.35(C) and (D) and 1321.40. The check cashing fee is not included when calculating the annual percentage rate.

⁶ R.C. 1321.403.



the loan was outstanding and the number of days for which the loan was originally contracted.⁷

Refinancing a loan

The bill permits a licensee to refinance a short-term loan *if* the refinanced loan is a short-term loan, the interest on the refinanced loan does not exceed 28% per year, and the licensee does not charge the monthly maintenance fee.⁸

Prohibited activities; borrower's eligibility

The existing Short-Term Loan Law prohibits a licensee from taking certain actions. The bill revises these prohibitions as follows:

(1) It also prohibits a licensee from charging, in connection with a loan, credit insurance premiums and charges for any ancillary product sold.

(2) With respect to a borrower's eligibility for a short-term loan, the bill prohibits a licensee from making a loan to a borrower if there exists an *outstanding loan* between that borrower and (a) the licensee, (b) a person related to the licensee by common ownership or control, or (c) any employee or agent of the licensee. This does not apply to a licensee's refinancing of a short-term loan.

Relatedly, the bill eliminates the prohibition against making a short-term loan to a borrower for purposes of retiring an existing short-term loan between any licensee and that borrower. It also eliminates the prohibition against making a loan to a borrower that (a) has received two loans within the previous 90 days from licensees, unless the borrower has completed a financial literacy program during that period, or (b) has received a total of four or more loans, from licensees, in the calendar year. (See "**Statewide common database**," below.)

(3) It prohibits making a short-term loan to a borrower if the loan will result in a total outstanding principal of more than \$2,500 in short-term loans made by licensees to that borrower at any one time. Prior to making a loan, a licensee must require each borrower to sign a written declaration that the borrower is eligible to receive a loan, and must make a concerted effort to verify the borrower's eligibility.

(4) In addition to the current prohibition against accepting the title of a vehicle as collateral, it also prohibits a licensee from accepting a vehicle's registration.

⁷ R.C. 1321.402. For this purpose, the monthly maintenance fee is not considered to be fully earned at the beginning of a month.

⁸ R.C. 1321.401.



(5) It removes the prohibition against billing any credit card issued by a depository financial institution in Ohio.

(6) It prohibits drafting funds electronically from such an institution *without* the borrower's written approval. A licensee cannot, however, attempt to collect from a borrower's account after two consecutive attempts have failed, unless the licensee obtains new written authorization to electronically transfer or withdraw funds from the borrower's account.

(7) It generally prohibits making a loan that includes a demand feature that permits the licensee, if the borrower fails to repay the loan, to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance. However, a licensee *may* make a loan with such a demand feature if the licensee (a) provides written notice of the loan's termination not earlier than ten days after the borrower's payment was due and (b) collects only prorated interest and the fees earned up to the loan's termination, in addition to the outstanding balance. For this purpose, the outstanding balance and prorated interest and fees are to be calculated as if the borrower had voluntarily prepaid the loan in full on the date of termination.

(8) It prohibits a licensee from failing to accept cash or a certified check from a third party when submitted on behalf of the borrower for repayment of a short-term loan in full or in part.

(9) It prohibits a licensee from contacting a borrower for any reason *other than* for the borrower's benefit regarding upcoming payments, options for obtaining loans, payment options, payment due dates, the effect of default, or, after default, receiving payments or other actions permitted by the licensee; to advise the borrower of missed payments or dishonored checks; or to assist the transmittal of payments via a third-party mechanism.

(10) In the event a loan or its servicing is sold or assigned, it prohibits a licensee from failing to provide notice and the information needed to make future payments.

In addition, the bill specifies that these prohibited activities are strict liability offenses – no criminal mental state is required.⁹

Internet lending

The bill removes the current restrictions under the Short-Term Loan Law on lending via the Internet. More specifically, it:

⁹ R.C. 1321.41, with a conforming change in R.C. 1321.35(C), 1321.411, and 1321.99(I).



--Eliminates the requirement that a borrower be physically present in the licensee's business location in order to make or offer a short-term loan to that borrower;

--Eliminates the prohibition against any person *not* located in Ohio from making a short-term loan to a borrower *in* Ohio from an office *not* located in Ohio; and

--Eliminates the prohibition against any person making, offering, or brokering a loan, or assisting a borrower to obtain a loan, via the Internet.

The bill retains the current restriction against any person making, offering, or brokering a loan, or assisting a borrower to obtain a loan, via *the telephone or mail*.¹⁰

Statewide common database

As the bill eliminates most of the existing restrictions on a borrower's eligibility for a loan (see directly above), it repeals the provisions establishing a statewide common database to be used by licensees to track short-term loans made to borrowers.¹¹

Penalty for unlicensed activity

Existing law prohibits any person from making a short-term loan to a borrower in Ohio without first having obtained a license from the Superintendent of Financial Institutions. It also prohibits making or offering a short-term loan via the telephone or mail.

The bill declares any loan made in violation of these prohibitions void. Additionally, the lender cannot collect or retain any principal, interest, or other charges in connection with the loan.¹²

Annual reports; analysis

Under current law, licensees are required to file annual reports with the Division of Financial Institutions relative to a licensee's business and operation for the preceding year. The Division must analyze the information received and publish its findings. The individual reports, however, are not open to public inspection.

The bill expressly requires that the analysis be made available to the public. In addition, the analysis must include:

¹⁰ R.C. 1321.36(A) and (B).

¹¹ Repealed R.C. 1321.46 and 1321.461.

¹² R.C. 1321.36(A) to (C).



--The total number of borrowers, loans, defaulted loans, and charged-off loans and the total dollar value of the charged-off loans;

--The average loan size, average contracted and experienced annual percentage rate, and average charges per loan, as well as the total contracted loan charges and total loan charges actually paid;

--The total number of check collection charges and their total dollar value;

--The total number of licensee business locations and the average number of borrowers per location; and

--Any other nonprivate information determined by the Superintendent.¹³

Exemptions from the Law

The bill states that the Short-Term Loan Law does not apply to any entity chartered and lawfully doing business under the authority of any Ohio law, law of another state, or federal law as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, if the subsidiary is regulated by a federal banking agency and is owned and controlled by a depository institution.¹⁴

Reduction of overlap between loan laws

Small Loan Law and General Loan Law

The bill places a restriction on loans made by licensees under the Small Loan Law (R.C. 1321.01 to 1321.19) and registrants under the General Loan Law (R.C. 1321.51 to 1321.60). Under the bill, those licensees and registrants cannot make loans (1) in the amount of \$1,000 or less or (2) with a duration of one year or less. They also cannot engage in any act or practice to evade that restriction.¹⁵ These prohibitions are strict liability offenses and a violation is a minor misdemeanor. Violators are subject to a fine of at least \$100 but not more than \$500.¹⁶

¹³ R.C. 1321.422.

¹⁴ R.C. 1321.36(D).

¹⁵ R.C. 1321.141 and 1321.592.

¹⁶ R.C. 1321.99(H) and (I).

Credit Services Organization Law

The bill also prohibits any credit services organization from selling, providing, or performing any of the services that such an organization is authorized under Ohio law to provide *if* the extension of credit meets any of the following conditions:

(1) The amount of credit is less than \$5,000 (the Small Loan Law generally covers loans of \$5,000 or less¹⁷).

(2) The repayment term is one year or less.

(3) The annual percentage rate exceeds 28%.¹⁸

This prohibition is a strict liability offense and a violation of this prohibition is a minor misdemeanor. Violators are subject to a fine of at least \$100 but not more than \$500.¹⁹

Application of the bill

The bill only applies to loans that are made, or extensions of credit that are obtained, beginning 180 days after the bill takes effect.²⁰

Comparison table of loan laws

The table illustrates a few of the key differences between the various loan laws under existing law and as modified by the bill.²¹

	Small loan	General loan	Short-term loan
Loan amount	Existing law: \$5,000 or less (R.C. 1321.02) Under the bill: \$1,001 to \$5,000 (R.C. 1321.141)	Existing law: No limit Under the bill: At least \$1,001 (R.C. 1321.592)	Existing law: \$500 or less (R.C. 1321.39) Under the bill: \$1,000 or less (R.C. 1321.39)

¹⁷ R.C. 1321.02, not in the bill.

¹⁸ R.C. 4712.071.

¹⁹ R.C. 4712.99(B).

²⁰ Section 3.

²¹ Please note this table is not a complete comparison. The three loan laws vary in numerous aspects not illustrated in the table, such as definition of interest, permissible fees, and loan products.



	Small loan	General loan	Short-term loan
Loan duration	Existing law: No limit Under the bill: More than one year (R.C. 1321.141)	Existing law: No limit Under the bill: More than one year (R.C. 1321.592)	Existing law: At least 31 days (R.C. 1321.39) Under the bill: Not more than one year (R.C. 1321.39)
Maximum annual interest rate	Existing law: 28% (loans of \$1,000 or less) 22% (loans greater than \$1,000) Alternative: 25% (R.C. 1321.13, 1321.131, and 1321.16)	Existing law: 21% on unpaid balance of the loan Alternative: 25% (R.C. 1321.51, 1321.57, and 1321.571)	Existing law: 28% on unpaid balance (R.C. 1321.35 and 1321.40 and 15 U.S.C. 1606)
	Under the bill: Same	Under the bill: Same	Under the bill: Same, but modifies the definition of interest (R.C. 1321.35 and 1321.40)

HISTORY

ACTION

DATE

Introduced	03-09-17
Reported, H. Government Accountability and Oversight	04-19-18
Passed House (71-17)	06-07-18
Reported, S. Finance	---

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