



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 123**

132nd General Assembly  
(As Passed by the House)

**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

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### **BILL SUMMARY**

- Modifies the Short-Term Loan Law with respect to the type of loans a licensee can make under the Law, the cost of a loan, a borrower's eligibility for a loan, prohibited actions by a licensee, 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 that have a duration of less than 180 days.
  - Prohibits credit services organizations from brokering an extension of credit for a buyer that is less than \$5,000, has a repayment term shorter than 180 days, 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 laws throughout the Ohio Revised Code. Small-dollar, short-term loans (less than six months) that are not for the sale of goods or services and 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%.<sup>1</sup> 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 (see, "**Short-Term Loan Law**," below) and restricts the duration of the loan under the Small Loan Law and General Loan Law to a minimum of 180 days. In addition, the bill prohibits Credit Service Organizations from brokering an extension of credit for a buyer that is (1) less than \$5,000, (2) has a repayment term shorter than 180 days, or (3) has an annual percentage rate greater than 28%. Credit Service Organizations are not considered lenders, but under continuing law are permitted to obtain an extension of credit by a third-party lender for a borrower for a fee.<sup>2</sup> 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) who would like to make small-dollar, short-term loans with a duration of less than 180 days.

### **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;

--Prohibited actions by a licensee and the penalty for unlicensed activity;

--Exemptions from the Law;

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<sup>1</sup> 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.

<sup>2</sup> R.C. 4712.01(C)(1)(b).



--The statewide common database; and

--The annual analysis of business conducted under the Law that must be published by the Division of Financial Institutions.

### **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:<sup>3</sup>

(1) The total amount of the loan does not exceed \$500 (continuing law).

(2) The minimum duration of the loan is the number of months equal to the sum of the originally contracted loan amount and all applicable charges divided by the total monthly payment (added by the bill). For example, if the originally contracted loan amount is \$380 and the applicable charges are \$20, and the monthly payment is \$100, the minimum duration of the loan would be four months  $((380+20)/100)$ . (Note: the specific numbers chosen are solely for the purpose of demonstrating how the minimum duration is calculated; they do not represent actual charges or monthly payments that might be related to a loan of \$380.)

Under current law, the duration of a loan cannot be less than 31 days. In addition, as described more fully under "**Reduction of overlap between loan laws,**" below, the bill limits loans and extensions of credit under those other loan laws to terms of 180 days or longer. Loans under the Short-Term Loan Law do not have such a restriction.

(3) The total monthly payment does not exceed an amount that is the greater of (a) 5% of the borrower's verified gross monthly income or (b) 6% of the borrower's verified net monthly income (added by the bill). For this purpose, this 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.<sup>4</sup>

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<sup>3</sup> R.C. 1321.35(E) and 1321.39.

<sup>4</sup> R.C. 1321.46.



(4) 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 if you do so by five p.m. of the business day immediately following the day you receive this contract." The bill continues to require the contract include a statement warning that cost of the loan is higher than average and a statement informing the borrower about a complaint process.

(5) The loan is a precomputed loan and is payable in substantially equal installments 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.

(6) The loan contract may be rescinded or canceled on or before 5 p.m. of the business day immediately following the day of the loan transaction (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.

## **Cost of a loan**

### **Permissible fees and charges**

Under the bill, a licensee is permitted to charge and collect *only* the following:<sup>5</sup>

- 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 monthly maintenance fees or the check collection charge. Additionally, in the computation of the annual percentage rate, the bill requires that all fees and charges, including interest and the monthly maintenance fees, be included.<sup>6</sup>

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<sup>5</sup> R.C. 1321.40.

<sup>6</sup> R.C. 1321.35(C) and (D).



- A monthly maintenance fee that does not exceed the lesser of 5% of the originally contracted loan amount or \$20, 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.
- One check collection charge per loan (continuing law);
- 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).

### **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 50% 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 and (2) the interest charges on a refinanced loan (see below).<sup>7</sup>

### **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 the loan was outstanding and the number of days for which the loan was originally contracted.<sup>8</sup>

### **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.<sup>9</sup>

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<sup>7</sup> R.C. 1321.403.

<sup>8</sup> R.C. 1321.402. For this purpose, the monthly maintenance fee is not considered to be fully earned at the beginning of a month.

<sup>9</sup> R.C. 1321.401.



## 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:<sup>10</sup>

(1) It also prohibits a licensee from charging 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 *only 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, (c) a person in whom the licensee has any financial interest of at least 10%, or (d) 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 (see "**Statewide common database**," below). 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.

(3) 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.

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

(5) It permits drafting funds electronically from such an institution *if* the borrower provides 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.<sup>11</sup>

(6) 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

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<sup>10</sup> R.C. 1321.41, with a conforming change in R.C. 1321.35(C).

<sup>11</sup> R.C. 1321.411.



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.

In addition, the bill specifies that these prohibited activities are strict liability offenses – no criminal mental state is required.<sup>12</sup>

### **Statewide common database**

Because 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.<sup>13</sup>

### **Penalty for unlicensed activity**

Existing law prohibits any person from making a short-term loan (1) to a borrower in Ohio without first having obtained a license from the Superintendent of Financial Institutions and (2) to a borrower that is not physically present in the licensee's business location. It also prohibits any person not located in Ohio from making a short-term loan to a borrower in Ohio from an office not located in Ohio.

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.<sup>14</sup>

### **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:

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<sup>12</sup> R.C. 1321.99(J).

<sup>13</sup> Repealed R.C. 1321.46 and 1321.461.

<sup>14</sup> 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.<sup>15</sup>

### **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.<sup>16</sup>

### **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 that have a duration of less than 180 days *or* engage in any act or practice to evade that restriction.<sup>17</sup> 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.<sup>18</sup>

#### **Credit Services Organization Law**

The bill also prohibits any credit services organization from brokering an extension of credit for a buyer if (1) the amount is less than \$5,000 (the Small Loan Law

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<sup>15</sup> R.C. 1321.422.

<sup>16</sup> R.C. 1321.36(D).

<sup>17</sup> R.C. 1321.141 and 1321.595.

<sup>18</sup> R.C. 1321.99(I) and (J).





generally covers loans of \$5,000 or less<sup>19</sup>), (2) the repayment term is shorter than 180 days, *or* (3) the annual percentage rate exceeds 28%.<sup>20</sup> 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.<sup>21</sup>

### Application of the bill

The bill applies to loans that are made, or extensions of credit that are obtained, beginning 90 days after the bill takes effect. The Superintendent may delay the bill's application for up to an additional 90 days if the Superintendent believes it is necessary to ensure full compliance with it.<sup>22</sup>

### Comparison table of loan laws

The table illustrates a few of the key differences between the various loan laws under existing law and modified under the bill.<sup>23</sup>

	Small loan	General loan	Short-term loan
<b>Loan amount</b>	Existing law: \$5,000 or less (R.C. 1321.02) Under the bill: Same	Existing law: No limit Under the bill: Same	Existing law: \$500 or less (R.C. 1321.39) Under the bill: Same
<b>Loan duration</b>	Existing law: No limit Under the bill: At least 180 days (R.C. 1321.141)	Existing law: No limit Under the bill: At least 180 days (R.C. 1321.595)	Existing law: At least 31 days (R.C. 1321.39) Under the bill: Calculation of the number of months equal to the sum of the originally contracted loan amount and all applicable charges divided by the total monthly payment (R.C. 1321.39)

<sup>19</sup> R.C. 1321.02, not in the bill.

<sup>20</sup> R.C. 4712.071.

<sup>21</sup> R.C. 4712.99(B).

<sup>22</sup> Section 3.

<sup>23</sup> 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.



	<b>Small loan</b>	<b>General loan</b>	<b>Short-term loan</b>
<b>Maximum annual interest rate</b>	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)  Under the bill: Same	Existing law: 21% on unpaid balance of the loan  Alternative: 25% (R.C. 1321.51, 1321.57, and 1321.571)  Under the bill: Same	Existing law: 28% on unpaid balance (R.C. 1321.35 and 1321.40 and 15 U.S.C. 1606)  Under the bill: Same, but modifies the definition of interest (R.C. 1321.35 and 1321.40)

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## HISTORY

### ACTION

### DATE

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

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