



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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132nd General Assembly
(As Passed by the General Assembly)

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

Sens. Burke, Hottinger, Lehner, Manning, Oelslager, Schiavoni, Sykes, Tavares, Thomas, Yuko

Effective date: October 29, 2018; applies to loans made and credit extensions obtained beginning April 27, 2019¹

ACT SUMMARY

Short-Term Loan Law

- Increases, from \$500 to \$1,000, the maximum amount a licensee can loan under the Short-Term Loan Law.
- Except as stated below, restricts the minimum duration of the loan to 91 days and the maximum loan duration to one year.
- Permits loans for a duration of less than 91 days if the total monthly payment on the loan does not exceed 6% of the borrower's verified gross monthly income or 7% of the borrower's verified net monthly income, whichever is greater.
- Permits the borrower to rescind or cancel the loan contract on or before 5 p.m. of the third business day immediately following the day of the loan transaction.
- Restricts the fees and charges that a licensee may charge for a loan to (1) interest not exceeding 28% per year, (2) a monthly maintenance fee, (3) a loan origination charge

¹ Section 3.

(only if loan is \$500 or greater), (4) a single check collection charge, and (5) a check cashing fee, and sets limits on the amount for these fees and charges.

- Prohibits the total amount of fees and charges a licensee can collect on a loan from exceeding 60% of the originally contracted loan amount.
- Permits a licensee to refinance a loan if the licensee does not collect a monthly maintenance fee on the refinanced loan.
- Requires that if a loan is prepaid in full or refinanced prior to its maturity date, the licensee must refund to the borrower a prorated portion of the charges.
- With the exception of a refinanced loan, prohibits a licensee from making a loan to a borrower if there exists an outstanding loan between that borrower and (1) the licensee, (2) a person related to the licensee by common ownership or control, or (3) any employee or agent of the licensee.
- Prohibits a licensee from electronically drafting funds from the borrower's bank account without written approval from the borrower, and prohibits a licensee from attempting to collect from a borrower's account after two consecutive attempts have failed, unless the licensee obtains a new written authorization.
- Prohibits a licensee from making a loan to a borrower if the loan will result in a total outstanding principal of more than \$2,500 at any one time.
- Prohibits a licensee from failing to accept cash or certified check from a third party when submitted on the borrower's behalf for repayment of the loan.
- Limits the ability of a licensee to contact a borrower for specified reasons.
- Prohibits a licensee from failing to provide notice and the information needed to a borrower to make future payments when a loan or its servicing is sold or assigned.
- Prohibits a licensee from making a loan that contains a demand feature that accelerates the loan if the borrower does not comply with the terms, unless the licensee (1) timely provides written notice to the borrower of the loan's termination and (2) collects only the outstanding balance and prorated interest and fees earned up to the termination date.
- Repeals a statewide common database to be used by licensees to track short-term loans made to borrowers.



- Eliminates the requirement that a licensee can only lend to a borrower physically present in the licensee's business location and that the business location must be located in Ohio.
- Removes the prohibition regarding the licensee making or offering a loan via the Internet.
- Modifies the requirement related to the annual analysis of business conducted under the Law that is published by the Division of Financial Institutions.
- Exempts certain depository institutions from the Law.

Small Loan Law and General Loan Law

- Prohibits licensees under the Small Loan Law and registrants under the General Loan Law from making loans (1) of \$1,000 or less or (2) with a duration of one year or less.

Credit Service Organization Law

- 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 that are 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 four lending laws: the Short-Term Loan Law,² the Small Loan Law,³ the General Loan Law,⁴ and the Consumer Installment Loan Act (CILA).⁵ Each lending law requires a separate license or registration, which, if obtained by the lender, allows the lender to enter into a loan transaction with a borrower with the terms permitted under that particular lending law. The lending laws vary in the permitted loan amount, loan duration, interest rate, loan products, and other features (see "**Comparison table of loan laws**," below).

The act (1) modifies the Short-Term Loan Law, restricting the loan amount to \$1,000 or less and the duration to one year or less, and (2) 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. Under continuing law, unchanged by the act, the CILA restricts loans to a minimum duration of six months and does not restrict the loan amount. In addition, the act 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 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, which are not restricted under the law.⁶

Therefore, the act requires lenders or brokers offering small-dollar, short-term loans (\$1,000 or less, one year or less) and which formerly would be regulated under the Small Loan, General Loan, or Credit Service Organization laws to obtain licensure instead under the Short-Term Loan Law or the CILA. Under the act, the Short-Term

² R.C. 1321.35 to 1321.48.

³ R.C. 1321.01 to 1321.33.

⁴ R.C. 1321.51 to 1321.60.

⁵ R.C. 1321.62 to 1321.702.

⁶ R.C. 4712.01(C)(1)(b).



Loan Law is the *only* license available for small-dollar, short-term loans with a duration of less than six months. A table summarizing key differences between the various lending laws governing small-dollar, short-term loans is available on page 13.

Short-Term Loan Law

The act modifies the Short-Term Loan Law 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;

--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 act, 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 the former 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 6% of the borrower's verified *gross* monthly income or 7% of the borrower's verified *net* monthly income, whichever is greater. (Under the former law, the duration of a loan could not be less than 31 days.) The act 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 act 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 act 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.⁷

(3) The loan is made pursuant to a written loan contract that sets forth the terms and conditions, 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 act, 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 act 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 act). "**Precomputed loan**" means a loan in which the debt is a sum comprising the principal amount and the 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 act).

⁷ R.C. 1321.46.

The act eliminates the requirement that the loan contract include a provision that offers the borrower an optional extended payment plan.⁸

Cost of a loan

Permissible fees and charges

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

- Interest not exceeding 28% per year (continuing law). The act modifies the definition of "**interest**" 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 act requires that all fees and charges, including 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 act). 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 of 2%, provided the fee is not added to the loan balance on which interest is charged (added by the act);
- One check collection charge per loan that does not exceed \$20 plus any amount passed on from the financial institution (continuing law);
- If a licensee provides the proceeds of a loan in the form of a check, a fee to cash that check not exceeding \$10 (added by the act);
- 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

⁸ R.C. 1321.35(E), 1321.39, 1321.391, and 1321.46.



costs cannot exceed the originally contracted loan amount (added by the act).⁹

Cap

Despite the above, under the act 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).¹⁰

Refund

If a loan is prepaid in full or refinanced prior to the loan's maturity date, the act requires the licensee to refund to the borrower a prorated portion of the interest, monthly maintenance fees, and all other charges. The refund must be calculated 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.¹¹

Refinancing a loan

The act 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.¹²

Prohibited activities; borrower's eligibility

The continuing Short-Term Loan Law prohibits a licensee from taking certain actions. The act 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) It limits the licensee's ability to have multiple loans outstanding with a single borrower, either directly or through affiliates. More specifically, with respect to a

⁹ R.C. 1321.35(C) and (D) and 1321.40. The check cashing fee is not included when calculating the annual percentage rate.

¹⁰ R.C. 1321.403.

¹¹ R.C. 1321.402. For this purpose, the monthly maintenance fee is not considered to be fully earned at the beginning of a month.

¹² R.C. 1321.401.

borrower's eligibility for a short-term loan, the act 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 act 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 who (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 caps the principal that may be outstanding for a particular borrower under the Short-Term Loan Law, regardless of whether the licensee lenders are affiliated. More precisely, 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 all 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 continuing prohibition against accepting the title of a vehicle as collateral, it also prohibits a licensee from accepting a vehicle's registration.

(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 permitting 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* (a) 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, (b) to advise the borrower of missed payments or dishonored checks, or (c) 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.

As under continuing law, a violation is a first degree misdemeanor. In addition, the act specifies that these prohibited activities are strict liability offenses – no criminal mental state is required.¹³

Statewide common database

As the act 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.¹⁴

Penalty for unlicensed activity

Continuing 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. The act removes the former requirement that a licensee can only lend to a borrower physically present in the licensee's business location and that the business location must be located in Ohio. Further, the act removes the prohibition on lenders making or offering a short-term loan via the Internet. Under continuing law, unchanged by the act, lenders are prohibited from making or offering short-term loans via the telephone or mail.

¹³ R.C. 1321.41, with a conforming change in R.C. 1321.35(C), 1321.411, and 1321.99(G) and (I).

¹⁴ Repealed R.C. 1321.46 and 1321.461.

The act declares any loan made in violation of these prohibitions void. Additionally, the lender has no right to collect or retain any principal, interest, or other charges in connection with the loan.¹⁵

Annual reports; analysis

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

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

--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.¹⁶

Exemptions from the Law

The act 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.¹⁷

¹⁵ R.C. 1321.36(A) to (C).

¹⁶ R.C. 1321.422.

¹⁷ R.C. 1321.36(D).

Reduction of overlap between loan laws

Small Loan Law and General Loan Law

The act 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 act, 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.¹⁸ 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 \$500.¹⁹

Credit Services Organization Law

The act 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 less²⁰).

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

(3) The annual percentage rate exceeds 28%.²¹

This prohibition is a strict liability offense, and a violation is a minor misdemeanor. Violators are subject to a fine of at least \$100 but not more than \$500.²²

Comparison table of loan laws

The table illustrates a few of the key differences between the various lending laws governing small-dollar, short-term loans. Please note this table is not a complete comparison. The lending laws vary in numerous aspects not illustrated in the table, such as definition of interest, permissible fees, and loan products.

¹⁸ R.C. 1321.141 and 1321.592.

¹⁹ R.C. 1321.99(H) and (I).

²⁰ R.C. 1321.02, not in the act.

²¹ R.C. 4712.071.

²² R.C. 4712.99(B).



	Small loan	General loan	Short-term loan	CILA
Loan amount	Former law: \$5,000 or less The act: \$1,001 to \$5,000 ²⁴	Former law: No restriction The act: At least \$1,001 ²⁵	Former law: \$500 or less The act: \$1,000 or less ²⁶	Continuing law: No restriction, but generally requires equal monthly payments ²³
Loan duration	Former law: No restriction The act: Not less than one year ²⁸	Former law: No restriction The act: Not less than one year ²⁹	Former law: At least 31 days The act: Not more than one year ³⁰	Continuing law: Not less than 6 months ²⁷
Maximum annual interest rate	Continuing law: 22% on unpaid principal 25% (Alternative) ³¹	Continuing law: 21% on unpaid balance of the loan Alternative: 25% ³²	Continuing law: 28% on unpaid balance The act: Same, but modifies the definition of interest ³³	Continuing law: 25% on unpaid principal 28% (for open-end loans) ³⁴

²³ R.C. 1321.631.

²⁴ R.C. 1321.02 and 1321.141.

²⁵ R.C. 1321.592.

²⁶ R.C. 1321.39.

²⁷ R.C. 1321.631.

²⁸ R.C. 1321.141.

²⁹ R.C. 1321.592.

³⁰ R.C. 1321.39.

³¹ R.C. 1321.13, 1321.131, and 1321.16.

³² R.C. 1321.51, 1321.57, and 1321.571.

³³ R.C. 1321.35 and 1321.40.

HISTORY

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³⁴ R.C. 1321.68 and 1321.681.

