



Ohio Legislative Service Commission

Bill Analysis

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H.B. 598

131st General Assembly
(As Introduced)

Rep. Terhar

BILL SUMMARY

- Creates the Ohio Consumer Installment Loan Act (CILA).
- Excludes specific transactions from the CILA.
- Permits the Superintendent of Financial Institutions to adopt rules to enforce the CILA.
- Establishes application procedures for an Ohio Consumer Installment Loan license.
- Permits a license under the bill to be renewed annually.
- Establishes guidelines for advertisements of loans under the CILA.
- Requires a licensee to maintain advertisement and loan records for three years.
- Permits business records under the CILA to be retained in electronic form if specified criteria are met.
- Requires the Division of Financial Institutions to examine loan records once every 24 months.
- Requires a licensee to file reports with the Nationwide Mortgage Licensing System and Registry.
- Requires a licensee to file an annual report with the Superintendent.
- Requires the Superintendent to annually publish an analysis of the information submitted by the licensees.

- Requires the confidentiality of individual reports filed by licensee with the Superintendent and certain examination and investigation information acquired by the Superintendent.
- Requires a licensee to comply with specified federal consumer protection laws.
- Establishes guidelines for loan transactions under the CILA.
- Permits loans issued under the CILA to be either interest-bearing or precomputed.
- Permits a licensee to contract for and receive interest up to 25% per year on the unpaid principal balances on a closed-end loan.
- Permits the licensee, at the request of the borrower, to obtain certain types of insurance.
- Restricts the amount a licensee is permitted to charge for a loan origination fee.
- Permits a licensee to charge check collection and default charge fees, however sets restrictions for both.
- Permits a licensee to extend credit through an open-end loan.
- Prohibits the interest on open-end loans from exceeding 28% per year.
- Establishes standards for computing interest on open-end loans.
- Permits the Superintendent to impose a fine for a violation under the CILA.
- Prohibits fines imposed by the Superintendent from exceeding \$25,000.
- Permits the Superintendent to investigate alleged violations, apply for a court order to enjoin a violation, and issue cease-and-desist orders.
- Permits the Ohio Attorney General to bring an action under the Consumer Sales and Practices Act.
- Permits a county prosecutor to bring an action to enjoin a violation under certain circumstances.

TABLE OF CONTENTS

Overview.....	4
Ohio Consumer Installment Loan license – requirements and restrictions.....	5
Prohibition against engaging in certain loan business without a CILA license	8



Licensee restrictions	8
Application for an initial license or renewal.....	9
Fees and general investigation.....	10
Investigation of control person.....	10
Issuance of license.....	10
Notice of intent to deny.....	11
License duration and renewal	11
Material changes – notify the Division	11
Superintendent assessments	12
Renewal application denied	12
Change of ownership – effect on license.....	12
Multiple locations, location of business, and business name	13
Licensee net worth.....	13
Advertising	13
Records	15
Advertisement records	15
Loan records	16
Paper and electronic record storage.....	16
Access and condition of records.....	18
Compliance with records requirement	18
Location of records – notice and advanced approval.....	18
Records after discontinuing business	20
Out-of-state records	20
Noncompliance with records requirement.....	21
Reimbursement for costs of producing client's financial records.....	21
Search and processing costs	21
Reproduction costs.....	22
Transportation costs.....	22
Information excluded from reimbursement.....	22
Payment.....	22
Reports	23
NMLSR report.....	23
Division report.....	23
Superintendent's report analysis	23
Confidential information	23
Examination and investigation.....	23
Application information	24
Financial institution regulatory authorities.....	24
Confidentiality and privilege	24
Superintendent sharing arrangements	25
Releasing confidential information to other agencies.....	25
Challenging information provided to NMLSR.....	25
Interfering with examination or investigation – prohibited acts.....	25
Compliance with federal consumer protection laws.....	26
Loan contract	26
Insurance	26
Advance payment	27
Interest rate change	27
Nonamortized or partially amortized interest-bearing loan maturity date	27
Statutory authority.....	28
Payment history	28
Interest and charges	28



Interest-bearing loans	28
Precomputed loans – payment and interest	29
Precomputed loans – prepayment.....	29
Precomputed loans – deferment.....	30
Insurance	30
Other charges	31
Licensee payment for borrower loan covenant duties.....	32
Loan origination charges	32
Check collection charge	33
Default charge.....	33
Penalty for violating the CILA's interest and charges provisions.....	33
Loan repayment.....	34
Additional insurance procedures	34
Open-end loans	34
Open-end loans – interest and charges.....	35
Open-end loans – payment	36
Open-end loans – insurance	36
Simultaneous loans.....	37
Prohibited acts	37
False and fraudulent representation	37
False or misleading statements.....	37
Improper, fraudulent, or dishonest dealings.....	38
Notice of revoked license	38
Loan document statements	38
Signing in blank.....	38
Entire agreement.....	39
Interest prior to disbursement.....	39
New loan	39
Inducements	39
Conducting loan business in a manner tending to conceal evasion of the CILA	39
Enforcement	40
Prohibition against violating or failing to comply with the CILA; penalties	40
Fines for violating the CILA	40
Investigation, injunction, and civil penalties	41
Report of violation	41
Superintendent enforcement authority without hearing.....	42
Attorney General and county prosecutor enforcement authority	42
Superintendent's rule-making authority	42
Definitions	42

CONTENT AND OPERATION

Overview

The bill creates the Ohio Consumer Installment Loan Act (CILA),¹ setting out the procedures and requirements for obtaining and maintaining an Ohio Consumer Installment Loan Act license (CILA license), and specifying the interest rate, fees, and

¹ R.C. 1321.62 through 1321.702.



charges permitted for loans issued under the CILA. In addition, the bill specifies the procedures required in the transaction and advertising of CILA loans. The bill distinguishes a loan made under the CILA from other types of consumer credit that are repaid in installments, pursuant to continuing law.

The CILA takes effect on July 1, 2017. The bill authorizes the Superintendent of Financial Institutions (Superintendent) to take whatever actions the Superintendent considers necessary to ensure full compliance with the CILA by that date, including the acceptance of applications for a CILA license.

Ohio Consumer Installment Loan license – requirements and restrictions

This bill creates a new type of license – the Consumer Installment Loan Act license. To obtain a license, an applicant must submit to the provisions of the CILA. In broad terms, the CILA license authorizes the licensee to engage in a limited type of credit transaction:

- The loan terms must be six months or more from the loan transaction date.
- The loan must require equal monthly payments.
- The loan must have an interest rate of not more than 25% (28% for open-end loans).
- The loan must not be secured by real property.
- The loan must not be covered by specified other laws, such as the Check-cashing Business Law, the Retail Installment Sales Law, the Pawnbrokers Law, the Short-term Lending Law, and the Small Loan Law.

The CILA does not apply to the following types of transactions:

- Any credit transaction made without a license issued under the bill pursuant to the CILA (see **COMMENT 1**);²
- Any credit transaction with a loan term of less than six months from the loan transaction date;³

² R.C. 1321.631(A).

³ R.C. 1321.631(B).



- Any credit transaction that does not require equal monthly payments (see **COMMENT 2**);⁴
- Any credit transaction with an interest rate in excess of that provided for under the CILA (see **COMMENT 1**) (see "**Interest and charges**," below);⁵
- Any residential mortgage;⁶
- Any credit transaction that is an exempt transaction for the purposes of the federal Truth in Lending Act, other than a transaction that meets the state exemption under the federal law, or otherwise is not subject to disclosure requirements under the Truth in Lending Act;⁷
- Any credit transaction that originates as a result of a referral from a person registered or acting as a credit services organization under Ohio law;⁸
- Any credit transaction made by a person licensed as a check-cashing business under Ohio law;⁹
- Any credit transaction made by a retail seller as a retail installment sale under Ohio law;¹⁰
- Any credit transaction made by a person licensed or acting as a pawnbroker under Ohio law;¹¹

⁴ R.C. 1321.631(C).

⁵ R.C. 1321.631(D).

⁶ R.C. 1321.62(AA) and 1321.631(E).

⁷ R.C. 1321.631(F); 15 U.S.C. 1601 and 12 C.F.R. 1026.29. See also Board of Governors of the Federal Reserve System, Regulation Z Compliance Guide, <https://www.federalreserve.gov/bankinfo/reg/regzcg.htm>, accessed October 5, 2016.

⁸ R.C. 1321.631(G).

⁹ R.C. 1321.631(H).

¹⁰ R.C. 1321.631(I).

¹¹ R.C. 1321.631(J).

- Any credit transaction made by a person licensed under the Short-term Lending Law;¹²
- Any credit transaction made by a collection agency;¹³
- Any credit transaction made by a licensed premium finance company;¹⁴
- Any credit transaction made by a person chartered and lawfully doing business under the authority of any Ohio law, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary that is regulated by a federal banking agency and is owned and controlled by a depository institution;¹⁵
- Any credit transaction made by a life, property, or casualty insurance company licensed in Ohio or any entity licensed under Ohio Insurance Law that makes advances or loans to any person who is licensed to sell insurance under the Insurance Law and who is authorized in writing by that entity to sell insurance;¹⁶
- Any licensee doing business under the Small Loan Law;¹⁷
- Any person making a business loan described under Ohio Uniform Commercial Code, in which loans made to commercial entities, or individuals operating as sole proprietorships may be subject to an agreed upon interest rate;¹⁸
- Any political subdivision or governmental or other public entity in or of the U.S. or any state, or the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Farmers Home Administration;¹⁹

¹² R.C. 1321.631(K).

¹³ R.C. 1321.631(L).

¹⁴ R.C. 1321.631(M).

¹⁵ R.C. 1321.631(N).

¹⁶ R.C. 1321.631(O).

¹⁷ R.C. 1321.631(P).

¹⁸ R.C. 1321.631(Q).

¹⁹ R.C. 1321.631(R).

- Any college or university, or controlled entity of a college or university;²⁰
- Any person doing business under Ohio law, another state's law, or federal law relating to banks, savings banks, savings societies, trust companies, credit unions, or savings and loan associations substantially all the business of which is confined to loans on real estate mortgages and evidences of their own indebtedness.²¹

Prohibition against engaging in certain loan business without a CILA license

The bill prohibits a person from doing either of the following without first having obtained a CILA license:

(1) Engaging in the business of lending money;

(2) Contracting for a loan, or receiving in connection with a loan, any interest and charges that in the aggregate are greater than the interest and charges that the lender would be permitted to charge if the lender were not a CILA licensee. (See **COMMENT 1.**)

This prohibition applies to any person who through fraud charges, contracts for, or receives greater interest, consideration, or charges than authorized for the loan. It also applies to a person who for compensation arranges such a loan or offers to find or arrange for another person to make such a loan.

If a lender violates the prohibition in making or collecting a loan, the underlying contract is void, and the lender has no right to collect, receive, or retain any principal, interest, or charges. The lender also is subject to injunctions and a fine of up to \$5,000.

The prohibition does not preclude the acquiring of a bona fide obligation for goods or services when the obligation is payable directly to the person who provided the goods or services.²²

Licensee restrictions

The bill permits a licensee to engage in the business of making loans under the CILA, provided the licensee does not do any of the following:

²⁰ R.C. 1321.631(S).

²¹ R.C. 1321.631(T).

²² R.C. 1321.63 and 1321.70.

- Assess an origination fee more than three times in any 12-month period;
- Accept a dated instrument from the borrower as security for a loan;
- Hold an instrument for a period of time prior to negotiation or deposit of the instrument;
- Pay to a borrower, credit to a borrower's account, or pay to another person on the borrower's behalf the amount of an instrument, less interest, fees, or any other charges permitted;
- Refinance the loan during the first 120 days of the loan term;
- Except for the permitted deferment charge, charge or collect any fee, charge, or remuneration of any sort for renewing, amending, or extending a loan beyond its original term.²³

In addition, a person engaged in the business of selling tangible goods or services related to tangible goods cannot receive or retain a CILA license for such a place of business.²⁴

Application for an initial license or renewal

The bill establishes the application procedures for the CILA license. The bill requires each application for a license to contain an undertaking by the applicant to abide by the bill's provisions. The application must be in writing, under oath, and in the form prescribed by the Superintendent, and must contain any information the Superintendent requires. Applicants that are foreign corporations must obtain and maintain a foreign corporation's license before a license is issued or renewed. If an application for a license or an application for a renewal does not contain all of the information required, the information must be submitted to the Division of Financial Institutions (Division) or to the Nationwide Mortgage Licensing System and Registry (NMLSR) within 90 days after the Superintendent or the NMLSR requests the information in writing (including electronic transmission or fax). If the applicant fails to do so, the Superintendent may consider the application withdrawn.²⁵

²³ R.C. 1321.632 and 1321.68.

²⁴ R.C. 1321.644.

²⁵ R.C. 1321.64(A) and (D) and 1321.641(C), and R.C. Ch. 1703., not in the bill.

Fees and general investigation

Once the application is filed and the applicant pays (1) a \$200 nonrefundable investigation fee, (2) a \$300 nonrefundable annual registration fee, and (3) any additional fee required by the NMLSR, the Division must investigate the relevant facts. If the application involves investigation outside of Ohio, the Division may require the applicant to advance sufficient funds to pay any of the actual expenses of the investigation when it appears that these expenses will exceed \$200. The Division must give the applicant an itemized statement of any of these expenses. Until the licensee pays the required fees, the Division cannot issue a license.²⁶

Investigation of control person

The Division's investigation must include both a civil and criminal records check of any control person, which must include criminal record information from the Federal Bureau of Investigation (FBI). To fulfill this requirement, the Superintendent must do either of the following:

(1) Request the Superintendent of the Bureau of Criminal Identification and Investigation (BCI), or a vendor approved by BCI, to conduct a criminal records check based on the control person's fingerprints or, if the fingerprints are unreadable, based on the control person's Social Security number;

(2) Authorize the NMLSR to request a criminal records check of the control person.

The applicant must pay any fee required by BCI or the NMLSR for the criminal records check.²⁷

Issuance of license

The Superintendent must issue a license to the applicant if the Superintendent finds both of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the CILA's purposes and the rules adopted pursuant to the CILA;

²⁶ R.C. 1321.64(B).

²⁷ R.C. 1321.64(C) and 109.572(C)(3), not in the bill.

(2) The applicant has the requisite net worth and assets required (see "**Licensee net worth**," below).

In addition, the licensee may hold other licenses or registrations issued by the Division as long as the licensee is in compliance with the CILA license requirements and restrictions and other applicable state and federal laws.²⁸

The license must be kept conspicuously posted in the place of business of the licensee and the license is not transferable or assignable.²⁹

Notice of intent to deny

If the Superintendent finds that the applicant does not meet the conditions set forth in the CILA, then the Superintendent must issue a notice of intent to deny the application. The Superintendent must promptly notify the applicant of the denial, the grounds for the denial, and the applicant's reasonable opportunity to be heard on the action in accordance with the Administrative Procedure Act.³⁰

License duration and renewal

The license is valid for one year. The license may be renewed annually on or before December 31 by submitting a renewal application in the form prescribed by the Superintendent. The application must be accompanied by (1) a \$300 nonrefundable renewal fee, (2) any assessment as determined by the Superintendent (see "**Superintendent assessments**," below), and (3) any additional fee required by the NMLSR. A licensee cannot be required to pay any other fee or assessment by Ohio or any Ohio political subdivision.³¹

Material changes – notify the Division

Licensees are required to notify the Division of material changes in the information contained in the application and exhibits, schedules, and other documentation submitted in connection with the application, and to report any material change within 30 days of the change. The bill provides that *material changes* can include changes in affiliations, controlling interest, officers, directors, criminal record, and any

²⁸ R.C. 1321.64(E) and 1321.67(E).

²⁹ R.C. 1321.643(C).

³⁰ R.C. 1321.64(F).

³¹ R.C. 1321.64(E) and 1321.641(A).

change in net worth below the license requirements (see "**Licensee net worth**," below).³²

Superintendent assessments

The Superintendent may require an assessment, as stated above, if the amount of renewal fees collected by the Division is less than the Superintendent's estimate of the expenditures of the Division's Consumer Finance Section for the following fiscal year. The Superintendent may assess each licensee at a rate sufficient to equal in the aggregate the difference between the renewal fees collected and the estimated expenditures. Each licensee must pay the assessed amount to the Superintendent prior to the last day of June. The assessment cannot exceed 10¢ per each \$100 of interest, excluding charge-off recoveries, loan origination charges, and credit line charges collected by that licensee during the previous calendar year. If an assessment is imposed, it cannot be less than \$250 per licensee and cannot exceed \$30,000 less the total renewal fees paid by each licensee (see "**License renewal**," above).³³ Thus, if the assessment according to the formula would be \$249, it appears that no assessment would be charged. If the assessment according to the formula would be \$30,001, then only \$30,000 would be charged.

The licensee remains liable for payment of this annual fee on any loan made by the licensee that has been sold, transferred, or assigned to another person if the licensee retains servicing rights.³⁴

Renewal application denied

An applicant's license must not be renewed if it is subject to an order of suspension, revocation, or an unpaid and past due fine imposed by the Superintendent.³⁵

Change of ownership – effect on license

If there is a change of 5% or more in the ownership of a licensee, the Division may investigate to determine whether any fact or condition exists that, if it had existed at the time of the original application for a license, it would have warranted the Division to deny the application (see "**Application for an initial license or renewal –**

³² R.C. 1321.67(C).

³³ R.C. 1321.641(B).

³⁴ R.C. 1321.67(F).

³⁵ R.C. 1321.641(D).

Issuance of license," above). If there is a change of 50% or more in the ownership of a licensee, the licensee must notify the Division within 15 calendar days. The Superintendent must then issue a provisional license that remains in effect for the lesser of six months after the date of receiving the notification, or until the Division concludes a similar investigation. At the end of the period, the Superintendent must either issue an amended license or revoke the license.³⁶

Multiple locations, location of business, and business name

The bill prohibits more than one place of business for the same license; however, the Superintendent may issue additional licenses to the same licensee. Each licensed place of business must be located in a state. When a licensee changes its place of business, it must give written notice of the change in advance to the Division, and the Division must provide a license for the new address without charge.

In addition, if a licensee changes its name, it must give written notice of the change to the Division prior to making loans under the new name, and the Division must provide a license in the new name without charge.³⁷

Licensee net worth

The bill requires that each licensee maintain both of the following:

(1) A net worth of at least \$50,000;

(2) For each license, assets of at least \$50,000 either in use or readily available for use in the conduct of the business.³⁸

Advertising

Every advertisement for an Ohio Consumer Installment Loan must state and clearly indicate the identity of the licensee in a manner that prevents confusion with the name of any other unrelated licensee. Licensees must be identified by means of trade names, service marks, or business names that are filed with the Division and the Ohio Secretary of State. Advertising must not be false, misleading, or deceptive. False, misleading, or deceptive advertising includes the following:

³⁶ R.C. 1321.64 and 1321.642.

³⁷ R.C. 1321.643(A) and (B).

³⁸ R.C. 1321.65.



- Any advertisement indicating that special terms, reduced rates, guaranteed rates, particular rates, or any other special feature of loans are available unless the advertisement clearly states any limitations that apply;
- Any advertisement containing a rate or special fee offer that is not a bona fide available rate or fee.³⁹

A licensee must comply with federal law regarding advertisements for credit for both open-end loans and closed-end loans.⁴⁰

In addition, the licensee **must not** do any of the following when advertising a loan:

- Use loan advertisements that provide only telephone or fax numbers or newspaper box addresses and that do not clearly indicate the identity of the licensee.
- Advertise that loans will be made within a specified time after the loan application is received, unless it is the general practice of the licensee to make loans within the specified time.
- Advertise special terms, reduced rates, reduced payments, or any other special feature of a loan within a specified limited time, unless the advertisement clearly states any limitations that apply to the offer.
- Advertise by the use of unqualified superlatives, including "lowest rates," "lowest costs," "lowest payment plan," or "cheapest loans," or by making offers that cannot be reasonably fulfilled.
- Advertise the words "new" or "reduced," or words of similar import, in connection with rates, costs, payments, or plans, for more than 90 days after the rates, costs, payments, or plans have become effective.
- Advertise rebates, rates, or charges below the maximum lawful rate of interest that are conditioned upon prompt payment unless the condition is clearly indicated.
- Advertise either of the following:

³⁹ R.C. 1321.651(A) and (B).

⁴⁰ R.C. 1321.651(C); 12 C.F.R. 1026.16 and 1026.24, not in the bill.

- Waiver of payments in the event of sickness or disability or other contingency, without advertising that the interest and other charges, if assessed, continue during the waiver period;
 - That the first payment on any loan may be made more than 30 days after the date of loan closing, without advertising that the interest and other charges, if assessed, will accrue from the date of disbursement of the loan funds until the first payment is due.
- Advertise for loans for illegal purposes.
 - Advertise the availability of credit-related insurance without disclosing the charge, if any, for the insurance.

If a licensee specifies in an advertisement charges on loans in dollars, the licensee must also state the length of time required to repay the loans as well as the method of repayment. The licensee also must, when the interest rate is stated, do so in a manner to prevent misunderstanding.

Any licensee advertising flat or average payments on loans that include principal and interest must specify the number and frequency of payments required to repay the loans. Whenever the amounts of periodic payments are advertised, the amounts must include all interest to the borrower, as well as principal. The principal payments alone may be shown separately provided the interest charges are also clearly stated with equal prominence.⁴¹

Records

Advertisement records

Each licensee must maintain in each licensed office or in a central location a records file of all advertising for a period of three years from the date disseminated. This requirement includes newspaper, magazine, direct mailing, and fax advertising and solicitations, roadside advertising, Internet advertising, and scripts of radio and television commercials. A record or other file must be readily available for inspection by the Division at all times. Each licensee must notify the Division in writing of the location of the record or file. Each licensee must, upon the request of the Superintendent, provide to the Division any printed or electronic advertising it has

⁴¹ R.C. 1321.651(D) to (N).

used regarding any business conducted pursuant to the CILA. The licensee must maintain the text of the advertising for three years from the date of usage.⁴²

Loan records

The bill requires that each licensee keep records pertaining to loans made under the CILA. The records must be segregated from records pertaining to other types of transactions. Each licensee must preserve records pertaining to these loans for at least three years after making the final entry on the records.⁴³

Paper and electronic record storage

Records pertaining to business conducted pursuant to the CILA may be maintained in their original paper form or, if all of the following conditions apply, on an electronic storage media or system:

- The system preserves the records in a nonrewritable, nonerasable format.
- The system verifies automatically the quality and accuracy of the storage media recording process.
- The system serializes the original and the duplicate units of storage media, and affixes a date and time for the required period of retention on both the original and duplicate.
- The system has the capacity to readily download indices and records preserved on the system to any medium acceptable to the Superintendent.
- Acceptable facilities and appropriate equipment are, at all times during normal business hours, available to the Superintendent for immediate, easily readable projection or production of images and for producing easily readable images.
- Immediate facsimile enlargement is available upon the Superintendent's request.
- A duplicate copy of the electronic record stored on the system for the time required is stored separately from the original electronic record.

⁴² R.C. 1321.651(O).

⁴³ R.C. 1321.66(A) and (C).

- The system organizes and indexes accurately all information maintained on both the original and duplicate system.
- At all times, indices of the electronic records being stored are available for examination by the Superintendent.
- Each index is duplicated and the duplicate copies are stored separately from the original copy of each index.
- Original and duplicate indices are preserved for the time required for the indexed records.
- An audit system is in place providing for accountability regarding inputting of records and inputting of any changes made to every original and duplicate record maintained and preserved.
- At all times, the results of the audit system are available for examination by the Superintendent.
- The audit results are preserved for the time required for the audited records.
- All information necessary to access the following are maintained, kept current, and provided promptly to the Superintendent, upon request: records and indices stored on the system, a copy of the physical and logical file format of the system, the field format of all different information types written on the system, together with the appropriate documentation and information necessary to access records and indices.
- Paper documents produced or reproduced by means of the system are not destroyed until the conditions set forth in the bill have been met with regard to each paper document that is to be destroyed.
- At the request of the Division, the records will be printed on paper for inspection or examination without cost to the Division within 72 hours after the request or, upon receipt of a request for additional time from the licensee, by any additional time the Superintendent may grant for good cause shown.⁴⁴

⁴⁴ R.C. 1321.66(B).

Access and condition of records

All records required to be maintained by a licensee must be kept current and available at all times during normal business hours for review by the Division. Records must be legible and maintained in a type size that is clearly readable without magnification and in conformity with any specific typeface or font size that may be required by Ohio or federal law. Except where otherwise provided by federal or Ohio law, records must be maintained in English. When records are allowed to be in a language other than English, the licensee, at its expense, is responsible for providing the Division with a full and accurate translation. For purposes of recordkeeping, "current" means within 30 business days from the date of the occurrence of the event required to be recorded.⁴⁵

Compliance with records requirement

The bill requires the Division to examine loan records at least once every 24 months for the purpose of determining whether the licensee is in compliance with the CILA and to verify the licensee's annual report.⁴⁶

Location of records – notice and advanced approval

A licensee may designate a primary location where all required records are maintained and may be accessed and reviewed by the Division.⁴⁷ Some records, however, must be maintained at either the licensed premises or any other location *approved in advance* in writing by the Superintendent. These records include:

(1) Copies of loan statements, which must be maintained in one file, in chronological order, and kept available for examination. Loan statements must disclose (a) the principal borrower's name, (b) the account number, (c) the date of the loan, (d) an itemization of the charges for all credit-related insurances provided under the CILA, and (e) the type of security.

(2) A ledger record, which must be kept for each outstanding loan and any loan paid in full within the last two years. The ledger record must disclose the following information, if applicable: (a) account number, (b) principal borrower's name and residence address, (c) date of the loan, (d) date finance charges begin to accrue, (e) contractual rate of loan interest, (f) federal annual percentage rate, (g) loan origination charge, (h) original principal amount, (i) scheduled or precomputed interest,

⁴⁵ R.C. 1321.661(A).

⁴⁶ R.C. 1321.661(B).

⁴⁷ R.C. 1321.661(C)(1).



(j) total of payments, (k) type of security, (l) terms of repayment, (m) types and amounts of credit-related insurance, (n) unit default charge, (o) chronological entry of all debits, credits, payments, and charges received, assessed, or disbursed in connection with the loan, recorded in an identifiable manner that shows the actual date of receipt, the assessment or disbursement, and the balance due on the account, and (p) the amount of points charged to the borrower.

(3) All loan agreements, notes, disclosure forms, closing statements, security agreements, and other documents signed by the obligors and taken in connection with loans made, which must be identified by the loan number and maintained in a separate file for each borrower.

(4) The cash receipt and disbursement record, which must include the account number and name of the principal borrowers, all transactions involving either the receipt or disbursement of money on the account of borrowers, and the actual date of the transaction.

(5) An alphabetical index of all borrowers, co-makers, guarantors, and other obligors identified by account number.

(6) A litigation record of all loans in litigation, which must be maintained for at least two years after the final entry has been made on the loan and kept current. The litigation record must include all of the following information: (a) loan number and name of principal borrower, (b) date litigation proceedings were initiated, the date and amount of the judgment, and the judgment rate of interest, (c) all original litigation records and documents, which must be maintained in the file of original papers, and (d) in cases of garnishment or attachment, all notices served on employers, or copies, and the amounts collected, which must be maintained in the file of original loan papers.

(7) A repossession record that records all loans in repossession, which must be maintained for at least two years after the final entry has been made on the loan and kept current. The repossession record must include all of the following information: (a) loan number and name of principal borrower, (b) type of security attached, replevied, repossessed, or surrendered, (c) date of repossession, date of sale of the security, the gross amount received from the sale of the security, the expenses deducted from the sale of the security, and the amount of money applied to the outstanding loan balance, (d) all original repossession legal documents and other records, which must be maintained in the file of original loan papers;⁴⁸ and (e) in instances where the security is offered for private sale, not less than three bona fide written bids or appraisals in order to establish that the terms of sale were fair to the borrower and, where the security is

⁴⁸ R.C. 1321.661(C)(2)(a) to (g)(iv).

offered for private or public sale, evidence that the sale was consummated in compliance with applicable Ohio Secured Transaction Law.⁴⁹

(8) A credit life claims record, which must cover all loans in which a credit life claim has been paid by the insurer. The record must be maintained for at least two years after the final entry has been made on the loan, be kept current, and include the (a) loan number and name of principal borrower, (b) date of death and certified copy of the death certificate or a copy of it, (c) name and address of second beneficiary, if any, and (d) copies of all checks received or paid pertaining to a credit life claim.

(9) Histories of nonpublished indices used to establish interest rates for variable rate loans, which must be maintained for two years from the date of usage and be available for review by the Division.

(10) Due bills, receipts, invoices, or other evidence, which must be maintained in the file of loan papers for any amount in excess of \$20 paid by the borrower to or through the licensee for any dishonored check, negotiable order of withdrawal, share draft, or any other negotiable instrument.⁵⁰

Records after discontinuing business

The bill requires that before ceasing to conduct or discontinuing business as a licensee, the licensee must arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under the CILA. The licensee must notify the Division in writing of the exact address where the books and records will be maintained during the required period.⁵¹

Out-of-state records

If a licensee's books, records, data, and documents are located outside of Ohio, the Division must issue a records request to the licensee requesting any books, records, data, and documents the Division may need in order to conduct its examination, and providing a date by which the records requested must be provided. The licensee may provide any requested records using any method and medium as the licensee chooses, including the transmission of electronic records. The licensee must reimburse the

⁴⁹ R.C. 1321.661(C)(2)(g)(v); R.C. 1309.610, 1309.611, 1309.615, 1309.617, and 1309.624, not in the bill.

⁵⁰ R.C. 1321.661(C)(2)(h) to (j).

⁵¹ R.C. 1321.666.



Division for any expenses the Division may incur in assembling, printing, or otherwise reproducing these materials.⁵²

If a licensee is unable or unwilling to provide the out-of-state items to the Division, the Division may require the licensee to pay in advance the estimated costs of the examination of the licensee outside of Ohio, including the proportionate cost of the salaries of Division employees who conduct the examination. The licensee must deposit the Superintendent's estimate of the costs of an out-of-state examination with the Division upon demand. After the actual costs of the out-of-state examination have been determined, any funds in the deposit account in excess of costs as itemized by the Division must be returned to the licensee.⁵³

Noncompliance with records requirement

The bill permits the Superintendent to suspend, revoke, or refuse to renew any CILA license, or bring any other authorized administrative enforcement action against any person for failure to maintain loan records in accordance with the CILA.⁵⁴

Reimbursement for costs of producing client's financial records

With the exception of the continuing law requirement regarding production of records by financial institutions, the bill requires any party, including a governmental authority, that requires or requests a licensee to assemble or provide a customer's financial records to pay the licensee for all actual and necessary costs directly incurred in searching for, reproducing, or transporting those records. As described below, the bill sets forth how these costs must be determined and computed.⁵⁵

Search and processing costs

The bill requires that reimbursement of search and processing costs must be the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging, and preparing financial records for shipment. The rate for search and processing costs is \$11 an hour per person, computed on the basis of \$2.75 per quarter hour or fraction thereof. The cost is limited to the total amount of personnel time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment where required or requested by a party. Specific

⁵² R.C. 1321.669(A).

⁵³ R.C. 1321.669(B).

⁵⁴ R.C. 1321.667.

⁵⁵ R.C. 9.02 and 1321.668(A).

salaries of the persons conducting the search cannot be included in search costs. In addition, search and processing costs cannot include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the rate specified above.⁵⁶

Reproduction costs

Reimbursement for reproduction costs must be for costs incurred in making copies of documents required or requested. The rate is 25¢ per page, including copies produced by reader or printer reproduction processes. Photographs, films, and other materials are reimbursed at actual cost.⁵⁷

Transportation costs

Reimbursement for transportation costs must be for necessary costs, directly incurred, to transport personnel to locate and retrieve the information required or requested and for necessary costs, directly incurred, solely by the need to convey the required or requested material to the place of examination.⁵⁸

Information excluded from reimbursement

The bill prohibits a licensee from being reimbursed for costs incurred in assembling or providing the following records or information:

- Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing to the licensee;
- Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.

Payment

The bill requires that the reimbursement payment only be made for costs that are directly incurred, actual, and necessary. Payment cannot be made until the licensee

⁵⁶ R.C. 1321.668(A)(1).

⁵⁷ R.C. 1321.668(A)(2).

⁵⁸ R.C. 1321.668(A)(3).

satisfactorily complies with the request or requirement. But if the request or requirement is withdrawn or revoked, the licensee must be reimbursed for the actual and necessary costs directly incurred in assembling financial records required or requested prior to the time the party notifies the licensee that it was withdrawn or revoked. Payment must not be made unless the licensee submits an itemized bill or invoice showing specific details concerning search and processing, reproduction, and transportation costs. In addition, search and processing time must be billed in 15-minute increments.⁵⁹

Reports

NMLSR report

The bill requires each licensee to submit to the NMLSR call reports or other reports, containing information the NMLSR may require.⁶⁰

Division report

As required by the Superintendent, each licensee must file with the Division an annual report concerning the business and operation of the licensee for the preceding calendar year. The report must be made under oath or affirmation, on forms supplied by the Division.⁶¹

Superintendent's report analysis

The Superintendent is required to annually publish an analysis of the information submitted by the licensees in the division reports described above. Individual reports submitted by the licensees are not public records and are not open to public inspection.⁶²

Confidential information

Examination and investigation

Under the bill, both examination and investigation information, and any information leading to or arising from an examination or an investigation are confidential. This information remains confidential for all purposes except when it is

⁵⁹ R.C. 1321.668(C).

⁶⁰ R.C. 1321.662(A).

⁶¹ R.C. 1321.662(B)(1).

⁶² R.C. 1321.662(B)(2).

necessary for the Superintendent to take official action regarding the affairs of a licensee, or in connection with criminal or civil proceedings to be initiated by a prosecuting attorney or the Attorney General. This information may also be introduced into evidence or disclosed as authorized under continuing law.⁶³

Application information

Generally, all application information is a public record. But, Social Security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on those cards, and criminal background information are not.⁶⁴

Financial institution regulatory authorities

Nothing in the bill regarding the confidentiality requirement prevents the Division from releasing to or exchanging with other financial institution regulatory authorities information relating to licensees. For this purpose, a "**financial institution regulatory authority**" includes a regulator of a business activity in which a licensee is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a licensee engaged in that business activity. A licensee is engaged in a business activity, and a regulator of that business activity has jurisdiction over the licensee, whether the licensee conducts the activity directly or a subsidiary or affiliate of the licensee conducts the activity.⁶⁵

Confidentiality and privilege

Under the bill, any confidentiality or privilege arising under federal or Ohio law with respect to any information or material provided to the NMLSR continues to apply to the information or material after it has been provided to the NMLSR. The information and material provided may be shared with all state and federal regulatory officials with oversight authority without the loss of confidentiality or privilege protections provided by federal law or the law of any state. This information or material to which confidentiality or privilege applies is not subject to any of the following:

- Disclosure under any federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or of the respective state;

⁶³ R.C. 1321.663(A) and R.C. 1181.25, not in the bill.

⁶⁴ R.C. 1321.663(B) and R.C. 149.43, not in the bill.

⁶⁵ R.C. 1321.663(C).

- Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless the person to whom such information or material pertains waives, in whole or in part and at the discretion of the person, any privilege held by the NMLSR with respect to that information or material.⁶⁶

Superintendent sharing arrangements

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the bill permits the Superintendent to enter into sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators. In addition, the bill specifies that any Ohio law relating to the disclosure of confidential supervisory information that is inconsistent with the bill is superseded by the bill's requirements.⁶⁷

Releasing confidential information to other agencies

The bill specifies that the Division is *not* prohibited from releasing confidential information relating to licensees to the Attorney General, to the Superintendent of Insurance (for purposes relating to the administration of Ohio Title Insurance Law), to the Commissioner of Securities (for purposes relating to the administration of Ohio Corporations and Partnerships Law), or to local law enforcement agencies and local prosecutors. However, the information the Division releases remains confidential.

Challenging information provided to NMLSR

The bill requires the Superintendent to adopt rules, in accordance with the Ohio Administrative Procedure Act, to establish a process by which licensees may challenge information provided to the NMLSR by the Superintendent.⁶⁸

Interfering with examination or investigation – prohibited acts

The bill prohibits any person, in connection with any examination or investigation conducted by the Superintendent from knowingly doing any of the following:

⁶⁶ R.C. 1321.663(D)(1).

⁶⁷ R.C. 1321.663(D)(2) and (3).

⁶⁸ R.C. 1321.663(E) and (F).

(1) Circumventing, interfering with, obstructing, or failing to cooperate with the Superintendent, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness;

(2) Withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information;

(3) Tampering with, altering, or manufacturing any evidence.⁶⁹

Compliance with federal consumer protection laws

In order to reduce the risk of consumer fraud and related harms, including identity theft, the bill requires all licensees to comply with specified federal consumer provision laws. These include the "Fair and Accurate Credit Transactions Act of 2003," the "Gramm Leach Bliley Act," and the rules adopted pursuant to those federal acts, including rules regarding proper maintenance, security, and disposal of consumer information and records.⁷⁰

Loan contract

Under the CILA, a loan is considered closed once it is signed by the obligor or obligors, but if the loan contract is not signed, then it is considered closed when the funds are disbursed. In addition, a loan that is made using direct mail must be made from a place of business for which a licensee holds a valid license.⁷¹

The CILA requires the licensee to comply with all of the following procedures in connection with the loan contract.

Insurance

The licensee must obtain the written consent of the borrower for any purchase of insurance on property of the borrower other than property used as security for the loan.

⁶⁹ R.C. 1321.664.

⁷⁰ R.C. 1321.665; "Fair and Accurate Credit Transactions Act of 2003," 117 Stat. 1952, 15 U.S.C. 1681w, as in effect on January 1, 2008, the "Gramm Leach Bliley Act," 113 Stat. 1138 (1999), 15 U.S.C. 6801, as in effect on January 1, 2008, and 16 C.F.R. 682, as in effect on January 1, 2008.

⁷¹ R.C.1321.67(A) and (B).

Advance payment

The licensee must permit payment to be made in advance in any amount on any contract at any time, but the licensee is permitted to apply the payment first to interest and charges due up to the date of payment.

Interest rate change

The licensee generally must notify the borrower in writing of any interest rate change at least 30 but not more 120 days prior to the effective date of the changes. If the interest rate is tied to a published and verifiable index and the contractual rate of interest is adjusted within 45 days of change in the published index rate, the licensee must notify the borrower in writing of any interest rate change at least 30 days prior to the effective date of the change. The notice must include all of the following:

(1) A statement of the borrower's current interest rate and corresponding monthly payment prior to the reset date.

(2) A good faith statement of the borrower's anticipated future interest rate and corresponding monthly payment following the reset date.

(3) A statement that notifies the borrower to contact the licensee for workout options if there is a possible problem of repayment at the new interest rate and monthly payment following the reset.

(4) A toll-free number by which borrowers can discuss possible payment problems and workout options.

(5) An explanation of the index or formula that is being used to reset the interest rate and the source of that index or formula.

Nonamortized or partially amortized interest-bearing loan maturity date

In the instance of a nonamortized or partially amortized interest-bearing loan, the licensee must provide the borrower with written notice of maturity at least 90 days but not more than 120 days prior to the expected maturity date (see **COMMENT 2**). "Amortization" generally means the debt is repaid on a fixed repayment schedule in regular installments over a period of time.⁷²

⁷² "Amortization" definition, Investopedia.com <http://www.investopedia.com/terms/a/amortization.asp>, accessed September 30, 2016.

Statutory authority

The licensee must clearly indicate by prominently disclosing on or in the loan documents, the federal or state statutory authority pursuant to which the loan is made. This disclosure must be provided on loans made (1) solely or partially in reliance on the CILA, or (2) in reliance on any combination of federal or state provisions that do not include provisions of the CILA.

Payment history

In providing any payment history requested by the borrower or by the Division, the licensee must provide a clear and accurate payment statement in a manner a reasonable borrower should understand that sets forth the dates and amounts due and owing and the dates and amounts received and paid.⁷³

Interest and charges

Under the bill a licensee is permitted to contract for and receive interest, calculated according to the actuarial method, at a rate or rates not more than 25% per year on the unpaid principal balances of the loan. Loans may be **interest-bearing** or **precomputed**.⁷⁴

For purposes of time computation on interest-bearing and precomputed loans, including the calculation of interest, a month is considered $\frac{1}{12}$ of a year, and a day is considered $\frac{1}{365}$ of a year when calculation is made for a fraction of a month. A year is 12 consecutive months. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month. A licensee may consider a day as $\frac{1}{360}$ of a year and each month as having 30 days.⁷⁵

Interest-bearing loans

Under the bill, the interest on interest-bearing loans generally must be computed on unpaid principal balances outstanding from time to time, for the time outstanding. Alternatively, a licensee may charge and collect interest for the first installment period based on elapsed time from the date of the loan to the first scheduled payment due

⁷³ R.C. 1321.67(D).

⁷⁴ R.C. 1321.68(A).

⁷⁵ R.C. 1321.68(B) and R.C. 1.44(B) and 1.45, not in the bill.

date, and for each succeeding installment period from the scheduled payment due date to the next scheduled payment due date, regardless of the date or dates the payments are actually made.

Each payment made by the borrower must be applied first to unpaid charges, then to interest, and the remainder to the unpaid principal balance. However, if the amount of the payment is insufficient to pay the interest, the unpaid interest continues to accumulate, and is paid from the proceeds of subsequent payments and is *not* added to the principal balance.

The bill prohibits interest from being compounded, collected, or paid in advance. However, interest can be charged to extend the first monthly installment period by no more than 15 days, and the interest charged for the extension may be added to the principal amount of the loan.

In addition, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the new loan contract may include any unpaid interest that has accrued. The resulting loan contract is deemed a new and separate loan transaction.⁷⁶

Precomputed loans – payment and interest

The bill requires precomputed loans to be repaid in monthly installments of principal and interest combined, however the first installment period may exceed one month by not more than 15 days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days. In addition, monthly installment payment dates may be omitted to accommodate a borrower with seasonal income.

Payments on a precomputed loan may be applied to the combined total of principal and precomputed interest until maturity of the loan. A licensee can charge interest after the original or deferred maturity of a precomputed loan at a rate not exceeding 25% per year on all unpaid principal balances for the time outstanding.

The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest.

Precomputed loans – prepayment

If a loan is paid in full (by cash, renewal, refinancing, or a new loan) one month or more before the final installment due date, the licensee must refund, or credit the

⁷⁶ R.C. 1321.68(C).

borrower with, the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, that follow the day of prepayment. If the prepayment is made other than on a scheduled installment due date, the nearest scheduled installment due date must be used for computation. If the prepayment occurs prior to the first installment due date, the licensee may retain $\frac{1}{30}$ of the applicable charge for a first installment period of one month for each day from date of loan to date of prepayment, and the licensee must refund, or credit the borrower with, the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee must credit the borrower with the same refund as if prepayment in full had been made on the date the judgment is entered.

Precomputed loans – deferment

If the parties agree in writing (either in the loan contract or in a subsequent agreement) to a deferment of wholly unpaid installments, a licensee may grant a deferment and may collect a deferment charge. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The bill defines the deferment period as the period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period cannot exceed the applicable charge for the installment period immediately following the due date of the last undeferred installment. A proportionate charge may be made for deferment for periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. If a loan is prepaid in full during a deferment period, the licensee must make, or credit to the borrower, a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.⁷⁷

Insurance

A licensee, at the request of the borrower, may obtain, on one or more borrowers, credit life insurance, credit accident and health insurance, and unemployment insurance. The premium or identifiable charge for the insurance may be included in the principal amount of the loan, but cannot exceed the premium rate filed by the insurer with, and not disapproved by, the Superintendent of Insurance. If a licensee obtains the insurance, the borrower must have the right to cancel the insurance for a period of 25 days after the loan is made. If the borrower chooses to cancel the insurance, the borrower must give the licensee written notice and must return all of the policies or certificates of insurance or notices of proposed insurance to the licensee during the applicable period. In addition, generally the licensee must refund the full premium or

⁷⁷ R.C. 1321.68(C)(2)(b) and (D).

identifiable charge for the insurance to the borrower. But, if the borrower requests that the refund be applied to reduce the balance of a precomputed loan, then the licensee must credit the amount of the refund plus the amount of interest applicable to the refund to the loan balance. If the licensee obtains the insurance, the licensee is prohibited from charging interest on any insured amount that remains unpaid after the insured borrower's date of death.⁷⁸

A licensee may require the borrower to provide insurance or a loss payable endorsement covering reasonable risks of loss, damage, and destruction of property that is used as security for the loan. With the consent of the borrower, the insurance may cover other property of the borrower. The amount and term of required property insurance must be reasonable in relation to the amount and term of the loan contract and the type and value of the security. The granting of the loan cannot be conditioned on the purchase of this insurance through the licensee or an agent or broker of the licensee. If the borrower purchases the insurance, the premium may be included in the principal amount of the loan.⁷⁹

Other charges

Although the bill prohibits the licensee from charging any amount other than the interest or other charges specified in the CILA (including broker fees, placement fees, or any other fees), the licensee **may** do all the following:

- 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.
- Include the following additional charges in the principal amount of the loan or collect the following additional charges at any time after the loan is made:
 - The amounts of fees authorized by law to record, file, or release security interests on a loan;
 - Fees received from borrowers to record, file, or release a security interest on a loan for purposes either of purchasing insurance to insure the licensee against losses for failure to record or file or creating a self-insurance fund to reimburse the licensee against losses for failure to record or file;

⁷⁸ R.C. 1321.68(E).

⁷⁹ R.C. 1321.68(F).

- Fees for credit investigations not exceeding \$25 if the licensee obtains a consumer report in connection with an application for a grant, extension, or other provision of credit to a consumer that is based in whole or in part on the consumer report.

The restrictions stated above do not limit the rights of a licensee to engage in other transactions with borrowers, provided the transactions *are not a condition of the loan*.⁸⁰

Licensee payment for borrower loan covenant duties

If the loan contract or security instrument contains covenants requiring the borrower to perform certain duties pertaining to insuring or preserving security and the licensee pays for performance of the duties on behalf of the borrower, the licensee may add the amount paid to the unpaid principal balance of the loan or collect them separately. A charge for interest may be made for sums advanced not exceeding 25% per year. Within a reasonable time after advancing a sum, the licensee must notify the borrower in writing of the amount advanced, any interest charged with respect to the amount advanced, and any revised payment schedule, and the licensee must include a brief description of the reason for the advance.⁸¹

Loan origination charges

In regards to loan origination charges, the bill permits the licensee to charge and receive the following:

- If the principal amount of the loan is \$500 or less, loan origination charges not exceeding \$15.
- If the principal amount of the loan is more than \$500 but less than \$1,000, loan origination charges not exceeding \$30.
- If the principal amount of the loan is at least \$1,000 but less than \$2,000, loan origination charges not exceeding \$100.
- If the principal amount of the loan is at least \$2,000 but less than \$5,000, loan origination charges not exceeding \$200.

⁸⁰ R.C. 1321.68(G).

⁸¹ R.C. 1321.68(H).

- If the principal amount of the loan is at least \$5,000, loan origination charges not exceeding the greater of \$250 or 1% of the principal amount of the loan.

Loan origination charges may be paid by the borrower at the time of the loan or may be included in the principal amount of the loan.⁸²

Check collection charge

A licensee may charge and receive check collection charges not greater than \$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.⁸³

Default charge

A licensee is permitted, if provided in the loan contract, to collect a default charge on any installment not paid in full within ten days after its due date. For this purpose, all installments are considered paid in the order in which they become due. Any amounts applied to an outstanding loan balance as a result of voluntary release of a security interest, sale of security on the loan, or cancellation of insurance must be considered payments on the loan, unless the parties otherwise agree in writing at the time the amounts are applied. A licensee cannot collect more than one default charge per unpaid installment regardless of the number of months the installment remains fully unpaid. The amount of the default charge cannot exceed the greater of 5% of the scheduled installment or \$15.⁸⁴

Penalty for violating the CILA's interest and charges provisions

Any person that willfully violates any of the preceding provisions regarding interest and charges forfeits to the borrower the amount of interest the borrower paid. The maximum rate of interest applicable to any loan transaction that does not comply with these provisions must be the rate that would be applicable in the absence of the CILA.⁸⁵

⁸² R.C. 1321.68(I).

⁸³ R.C. 1321.68(J).

⁸⁴ R.C. 1321.68(K).

⁸⁵ R.C. 1321.674.

Loan repayment

When the loan is repaid in full, the original note signed by an obligor or a copy, photograph, or stored representation of the original note must be plainly marked "*paid*" or "*anceled*." The note or reproduction must be returned to the obligor or, if there are two or more obligors, to one of them. Also, if requested, the licensee must give a receipt to the borrower for each payment made on account of any interest-bearing or precomputed loan.⁸⁶

Additional insurance procedures

When, in connection with a loan, a licensee furnishes or places insurance written on behalf of the borrower at the borrower's expense, a policy or certificate of insurance properly executed must be furnished to the borrower within 15 days of the closing date of the loan. The policy or certificate must state the name of the insurance company, the nature of the insurance, the extent of the coverage, the amount of the premium, and the effective and expiration dates of the policy.

If a licensee furnishes or places credit life insurance, credit accident and health insurance, or unemployment insurance on behalf of the borrower at the borrower's expense, the licensee must give written notice to the borrower at the time the loan is made. The notice must disclose the borrower's right to cancel the insurance within 25 days after the purchase of the insurance with a full refund of the premium or identifiable charge for the insurance. The notice must further disclose that the cancellation may be effected upon the written request of the borrower together with the return of the policy or certificate of insurance to the licensee.

All insurance sold or obtained in connection with the making of a loan must be governed by Ohio Insurance Law. In addition, in any transaction in which the licensee furnishes or places insurance on behalf of the borrower at the borrower's expense, the licensee must first provide written disclosure to the borrower of the business relationship, beneficial ownership, or affiliation between the licensee and the insurer.⁸⁷

Open-end loans

The bill permits for the extension of credit through an open-end loan. For open-end loans, a billing cycle, or the time interval between periodic billing dates, must be monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date. A licensee may make open-end loans pursuant to

⁸⁶ R.C. 1321.671.

⁸⁷ R.C. 1321.672.



an agreement between the licensee and the borrower in which the licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower. The amount of each advance and permitted interest, charges, and costs are debited to the borrower's account and payments and other credits are credited to the same account. The interest and charges are computed on the unpaid balance or balances of the account from time to time. The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in installments of determinable amounts as provided in the agreement.⁸⁸

Open-end loans – interest and charges

A licensee may contract for and receive interest for open-end loans at a rate or rates not exceeding 28% per year and may compute interest in each billing cycle by either (1) multiplying the daily rate by the daily unpaid balance of the account (the daily rate is the annual rate divided by 365) or (2) multiplying the monthly rate by the average daily unpaid balance of the account in the billing cycle. The average daily unpaid balance is the sum of all of the daily unpaid balances each day during the cycle divided by the number of days in the cycle. The monthly rate is the annual rate divided by 12.

The bill requires the billing cycle to be monthly and the unpaid balance on any day must be determined by adding to any balance unpaid as of the beginning of that day all advances and permitted interest, charges, and costs and deducting all payments and other credits made or received that day. In addition to the interest permitted, a licensee may charge and receive or add to the unpaid balance any or all of the following:

- All authorized charges and costs as described above in "**Interest and charges**" for "**Insurance**," "**Other charges**," "**Licensee payments for borrower loan covenant duties**," and "**Check collection charge**."
- An annual credit line charge, for the privilege of maintaining a line of credit, as follows:
 - For the first year:
 - If the original credit line is less than \$5,000, an amount not exceeding \$150.

⁸⁸ R.C. 1321.681(A) and (B).

- If the original credit line is at least \$5,000, an amount not exceeding the greater of 1% of the original credit line or \$250.
 - For subsequent years, an amount not exceeding the greater of ½% of the credit line on the anniversary date or \$50.
 - A default charge on any required minimum payment not paid in full within ten days after its due date. For this purpose, all required minimum payments are considered paid in the order in which they become due. The amount of the default charge cannot exceed the greater of 5% of the required minimum payment or \$20.⁸⁹

Open-end loans – payment

The borrower can at any time pay all or any part of the unpaid balance on the account. If the account is not in default, the borrower can pay the unpaid balance in installments subject to minimum payment requirements determined by the licensee and set forth in the loan agreement. In addition, whenever there is no unpaid balance in an open-end loan account, the account may be terminated by written notice, by the borrower or the licensee, to the other party.⁹⁰

Open-end loans – insurance

If credit life insurance or credit accident and health insurance is obtained by the licensee and if the insured dies or becomes disabled when there is an outstanding open-end loan indebtedness, the insurance must be sufficient to pay (1) the unpaid balance on the loan due on the date of the borrower's death (credit life insurance) or (2) all minimum payments that become due on the loan during the covered period of disability (credit accident and health insurance). The additional charge for credit life insurance, credit accident and health insurance, or unemployment insurance must be calculated each billing cycle by applying the current monthly premium rate for the insurance, filed by the insurer with, and not disapproved by, the Superintendent of Insurance, to the unpaid balances in the borrower's account, using one of the methods described above for the calculation of interest. A licensee is prohibited from cancelling this insurance because of delinquency of the borrower in making the required minimum payments on the loan, unless a payment is past due for 30 days or more. The

⁸⁹ R.C. 1321.681(C), (D), and (E).

⁹⁰ R.C. 1321.681(F) and (H).

licensee must advance to the insurer the amounts required to keep the insurance in force during the period, which may be debited to the borrower's account.⁹¹

Simultaneous loans

The bill prohibits a licensee from permitting any borrower to be indebted for a loan under the CILA while the borrower is also indebted to an affiliate or agent of the licensee for a loan made under the Small Loan Law or the Mortgage Loan Law⁹² for the purpose or with the result of obtaining greater charges than otherwise would be permitted by the CILA. In addition, a licensee cannot induce or permit any person to become obligated to the licensee under the CILA, directly or contingently, or both, under more than one loan contract at the same time for that purpose or result.

After receiving a written request from a borrower, or by another person designated in writing by the borrower, a licensee must provide information regarding the amount required to pay the loan made pursuant to the CILA in full within five business days.⁹³

Prohibited acts

The bill specifies a number of acts that the licensee is prohibited from doing. These are listed below.

False and fraudulent representation

A licensee cannot obtain a license through any false or fraudulent representation of a material fact or any omission of a material fact required by state or federal law, or make any substantial misrepresentation in the application to engage in lending under the CILA.⁹⁴

False or misleading statements

A licensee, in connection with the business of making or offering to make a loan, must not knowingly make false or misleading statements of a material fact, omissions of statements required by state or federal law, or false promises regarding a material fact,

⁹¹ R.C. 1321.681(G).

⁹² R.C. 1321.01 to 1321.19 and 1321.51 to 1321.60, not in the bill.

⁹³ R.C. 1321.69(A), (B), and (C).

⁹⁴ R.C. 1321.69(D).



through advertising or other means, or knowingly engage in a continued course of misrepresentations.⁹⁵

Improper, fraudulent, or dishonest dealings

A licensee, or person making loans under the CILA without a CILA license, must not knowingly engage in conduct, in connection with the business of making or offering to make a loan pursuant to the CILA, that constitutes improper, fraudulent, or dishonest dealings (see **COMMENT 1**).⁹⁶

Notice of revoked license

A licensee or applicant for a license must not fail to notify the Division within 30 days after having a license, or comparable authority, revoked in any governmental jurisdiction.⁹⁷

Loan document statements

A licensee must not knowingly make, propose, or solicit fraudulent, false, or misleading statements on any loan document or on any document related to a loan. "Fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.⁹⁸

Signing in blank

A licensee must not knowingly instruct, solicit, propose, or otherwise cause a borrower to sign in blank a loan-related document in connection with a loan. In addition, a licensee must not take any note or promise to pay in which blanks are left to be filled in after execution.⁹⁹

⁹⁵ R.C. 1321.69(E).

⁹⁶ R.C. 1321.69(F).

⁹⁷ R.C. 1321.69(G).

⁹⁸ R.C. 1321.69(H).

⁹⁹ R.C. 1321.69(I) and (K).

Entire agreement

A licensee must take only notes or other promises to pay that set forth the entire agreement made with the borrower.¹⁰⁰

Interest prior to disbursement

A licensee must not charge or collect interest prior to the date of disbursement of the loan funds to the borrower.¹⁰¹

New loan

A licensee must not make a new loan for the purpose of paying any part of the interest or principal due on an existing loan with the same licensee unless the interest and principal balance of the existing loan is paid in full from the proceeds of the new loan.¹⁰²

Inducements

A licensee must not give, or advertise an offer to give, any thing of value as inducement to a borrower or prospective borrower to obtain a loan, unless the cost of the thing of value is absorbed by the licensee as general overhead, rather than directly charged to the borrower who received the thing of value.¹⁰³

Conducting loan business in a manner tending to conceal evasion of the CILA

The bill authorizes the Superintendent to regulate instances in which a CILA licensee conducts CILA loan business (1) in a place of business in which other business is solicited or engaged in or (2) in association or conjunction with another business. If the Superintendent finds (pursuant to a hearing) that the other business is of such a nature that the conduct tends to conceal evasion of the CILA, the Superintendent may order the CILA licensee in writing to desist from the conduct. The bill prohibits the CILA licensee from conducting loan business in violation of the order.¹⁰⁴

¹⁰⁰ R.C. 1321.69(J).

¹⁰¹ R.C. 1321.69(L).

¹⁰² R.C. 1321.69(M).

¹⁰³ R.C. 1321.69(N).

¹⁰⁴ R.C. 1321.673.

Enforcement

Prohibition against violating or failing to comply with the CILA; penalties

Under the bill, if the Division finds that a CILA licensee violated or failed to comply with any CILA requirement or the rules adopted thereunder, any federal lending law, or any other law applicable to the business conducted under a license, the Division may revoke, suspend, or refuse to renew the license. But the Division must provide written notice to the licensee stating the contemplated action, the grounds for the action, and the licensee's reasonable opportunity to be heard in an administrative hearing. In addition to, or in lieu of, any revocation, suspension, or denial, the Division may impose a monetary fine after the administrative hearing or in settlement of matters.

The revocation, suspension, or refusal to renew must not impair the obligation of any preexisting lawful contract made under the CILA. However, a prior licensee must make good faith efforts to promptly transfer the licensee's collection rights to another licensee or person exempt from licensing, or be subject to additional monetary fines and legal or administrative action by the Division. The court may still impose a cease-and-desist order preventing any further business or servicing activity.¹⁰⁵

Fines for violating the CILA

The bill permits the Superintendent to impose a fine for a violation of the CILA committed by a licensee. All fines must be paid to the Treasurer of State to the credit of the Consumer Finance Fund. The fines cannot exceed \$25,000. In determining the amount of a fine to be imposed, the Superintendent may consider all of the following to the extent it is known to the Division:

- The seriousness of the violation;
- The licensee's good faith efforts to prevent the violation;
- The licensee's history regarding violations and compliance with Division orders;
- The licensee's financial resources;

¹⁰⁵ R.C. 1321.70(A), (B), and (C).



- Any other matters the Superintendent considers appropriate in enforcing the CILA.¹⁰⁶

Investigation, injunction, and civil penalties

The Superintendent may also investigate alleged violations of the CILA or the rules adopted under it, as the result of the Superintendent's own decision or pursuant to a complaint. In conducting an investigation, the Superintendent may subpoena witnesses to testify in relation to any matter over which the Superintendent has jurisdiction, and may require the production or photocopying of any book, record, or other document pertaining to the matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any document as required by the subpoena, or permit photocopying of any document subpoenaed, the Superintendent may apply to the court of common pleas for an order to compel obedience by attachment proceedings for contempt.

In addition, if the Superintendent determines that a person is engaged in, or is believed to be engaged in, activities that may constitute a violation of the CILA, the Superintendent may, after notice and a hearing conducted in accordance with the Administrative Procedure Act, issue a cease-and-desist order. In seeking to enjoin unlicensed CILA loan activity, the Superintendent may also seek and impose fines for those violations of not more than \$5,000 per violation (see **COMMENT 1**). This order is enforceable in the court of common pleas.

The Superintendent may apply to the court of common pleas for an order enjoining any violation. If the Superintendent shows the court that a person has committed, or is about to commit, a violation, the court must grant an injunction, restraining order, or other appropriate relief. In addition, the Superintendent, in seeking an order enjoining a person from acting as a licensee under the CILA without a license, may also seek and obtain civil penalties for that unlicensed conduct of not more than \$5,000 per violation (see **COMMENT 1**).¹⁰⁷

Report of violation

The Superintendent is required to regularly report violations, as well as enforcement actions and other relevant information, to the NMLSR.¹⁰⁸

¹⁰⁶ R.C. 1321.70(D).

¹⁰⁷ R.C. 1321.70(E), (F), and (G).

¹⁰⁸ R.C. 1321.70(H).

Superintendent enforcement authority without hearing

In order to protect the public interest, the Superintendent may do either of the following without a prior hearing:

(1) Suspend any licensee who is in violation of the CILA's net worth and asset requirement (see "**Licensee net worth**," above).

(2) Suspend any licensee who fails to comply with a request made by the Superintendent pursuant to the Superintendent's enforcement authority.

For any suspension listed above, the Superintendent may, in accordance with the Administrative Procedure Act, subsequently revoke the license.¹⁰⁹

Attorney General and county prosecutor enforcement authority

Under the bill, the Ohio Attorney General may directly bring an action to enjoin a violation of the CILA, with the same rights, privileges, and powers as those described under the Consumer Sales Practices Act. In addition, the prosecuting attorney of the county in which the action may be brought may bring an action to enjoin a violation, but only if the prosecuting attorney first presents any evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.¹¹⁰

Superintendent's rule-making authority

The bill permits the Superintendent to adopt rules, in accordance with the Administrative Procedure Act, that are consistent with the CILA and that are necessary for the enforcement of the CILA. Each rule must contain a reference to the section, division, or paragraph of the Revised Code to which it applies. The Superintendent must send by regular mail to each licensee a copy of each rule that is adopted.¹¹¹

Definitions

The bill adopts the following definitions for purposes of the CILA:

"**Actuarial method**" means the method of allocating payments made on a loan between the principal amount and interest in which a payment is applied first to the accumulated interest and the remainder to the unpaid principal amount.

¹⁰⁹ R.C. 1321.70(I).

¹¹⁰ R.C. 1321.701.

¹¹¹ R.C. 1321.702.

"**Advertisement**" and "**advertising**" mean all material published, displayed, distributed, or broadcasted, and all material displayed or distributed over the Internet, telephone, fax, or other electronic transmission, for the purposes of obtaining applications for loans.

"**Affiliation**" and "**affiliated with**" mean controlled by or under common control with another person or enterprise either directly or indirectly through one or more intermediaries.

"**Annual percentage rate**" means the ratio of the interest on a loan to the unpaid principal balances on the loan for any period of time, expressed on an annual basis.

"**Applicable charge**" means the amount of interest attributable to each monthly installment period of the loan contract, computed as if each installment period were one month and any charge for extending the first installment period beyond one month is ignored. In the case of loans originally scheduled to be repaid in 61 months or less, "applicable charge" for any installment period means that proportion of the total interest contracted for, as the balance scheduled to be outstanding during that period bears to the sum of all of the periodic balances, all determined according to the payment schedule originally contracted for. In all other cases, "applicable charge" for any installment period is that which would have been made for such period had the loan been made on an interest-bearing basis, based upon the assumption that all payments were made according to schedule.

"**Assets**" means properties of value that are owned by the applicant or licensee, including cash on hand and in depository institutions, readily marketable securities, accounts receivable less allowances for uncollectible accounts, and real estate less liens and depreciation. "Assets" does not mean office premises, leasehold improvements, office furniture, fixtures, and equipment, or intangible assets.

"**Closed-end loan**" means any extension of credit other than an open-end loan.

"**Collecting**" and "**collected**" mean the servicing of a loan or receipt of payments from a borrower for a loan made pursuant to the CILA.¹¹²

"**Consumer report**" has the same meaning as in federal "Fair Credit Reporting Act": generally, any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of

¹¹² R.C. 1321.62(A) through (H).

serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; for employment purposes; or for specified other purposes permitted by the federal act.¹¹³

"Consumer reporting agency" has the same meaning as in the federal "Fair Credit Reporting Act": any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly assembles or evaluates consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.¹¹⁴

"Control person" means a person that, in the determination of the Superintendent of Financial Institutions, has the authority to direct and control the operations of the applicant.¹¹⁵

"Costs directly incurred" means costs incurred solely and necessarily as a consequence of searching for, reproducing, or transporting books, papers, records, or other data, in order to comply with a request or requirement to produce a customer's financial records. The term does not include any allocation of fixed costs, such as overhead, equipment, and depreciation. If a licensee has financial records that are stored at an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs must be considered to be directly incurred by the licensee.¹¹⁶

"Customer" means any person or authorized representative of that person who has maintained or is maintaining an account or deposit of any type, or has utilized or is utilizing any service of a financial institution, or for whom a financial institution has acted or is acting as a fiduciary in relation to an account or deposit maintained in the person's name.¹¹⁷

"Depository institution" has the same meaning as in Section 3 of the "Federal Deposit Insurance Act" and includes any credit union. Under the federal Deposit Insurance Act, the term "depository institution" means any bank or savings association. "Bank" means any national bank and State bank, any federal branch and insured

¹¹³ R.C. 1321.62(I) and 15 U.S.C. 1681a, as amended, not in the bill.

¹¹⁴ R.C. 1321.62(I) and 15 U.S.C. 1681a, as amended, not in the bill.

¹¹⁵ R.C. 1321.62(J).

¹¹⁶ R.C. 1321.668(D).

¹¹⁷ R.C. 1321.668(D) and R.C. 9.02(A)(1), not in the bill.

branch, and includes any former savings association. "Savings association" means any federal savings association, state savings association, and any corporation (other than a bank) that the Federal Deposit Insurance Corporation board of directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.¹¹⁸

"**Direct mail**" means a loan arranged by an application through the mail or Internet where the loan proceeds are delivered through the mail or electronic transmission to the benefit of a borrower. A loan is not made by "direct mail" if it is facilitated by face-to-face, personal contact in Ohio between the lender, lender's employee or agent, or lender's attorney and the borrower or borrower's agent.

"**Federal banking agency**" means the board of governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

"**Final entry on a loan**" means, as to a particular lender, the latter of the date the loan is paid in full, deemed uncollectible, assigned to another licensee or exempt entity and all records are transferred to the new lender, or discharged or otherwise settled by an order terminating litigation governing the loan transaction.¹¹⁹

"**Financial record**" means any record, including statements or receipts, and checks, drafts, or similar instruments, or information derived from the record, that is maintained by a financial institution and that pertains to a deposit or account of a customer, a service of the financial institution utilized by a customer, or any other relationship between a customer and the financial institution.¹²⁰

"**Governmental authority**" includes the state, any political subdivision, district, or court, and any agency, department, officer, or authorized employee of any of those entities.¹²¹

"**Interest**" means all charges payable by a borrower to a licensee as a condition to a loan or an application for a loan, however denominated. "Interest" *does not* include default charges, deferment charges, insurance charges or premiums, court costs, loan origination charges, check collection charges, credit investigation charges, credit line charges, points, or other fees and charges specifically authorized by law.

¹¹⁸ R.C. 1321.62(K) and 12 U.S.C. 1813, not in the bill.

¹¹⁹ R.C. 1321.62(L) through (N).

¹²⁰ R.C. 1321.668(D) and R.C. 9.02(A)(4), not in the bill.

¹²¹ R.C. 1321.668(D) and R.C. 9.02(A)(2) , not in the bill.

"Interest-bearing loan" means a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.

"Instrument" means a personal check or authorization to transfer or withdraw funds from an account that is signed by the borrower and made payable to a person subject to the CILA.

"License" means a license issued under the CILA.

"Licensee" means any person that has been issued a license under the CILA.

"Net worth" means the excess of assets over liabilities as determined by generally accepted accounting principles (GAAP).¹²²

"NMLSR" (Nationwide Mortgage Licensing System and Registry) means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities, for the licensing and registration of loan originators, or any system established by the U.S. Secretary of Housing and Urban Development pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).¹²³

"Open-end loan" means consumer credit extended by a creditor under a plan to which all of the following conditions apply:

(1) The creditor reasonably contemplates repeated transactions.

(2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance.

(3) The amount of credit that may be extended to the borrower during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

"Person" means an individual or any legal entity.

"Precomputed loan" means a loan in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all scheduled payments will be made when due.

¹²² R.C. 1321.62(O) through (T).

¹²³ R.C. 1321.62(U) and 12 U.S.C. 5101, not in the bill.

"Principal amount" means the amount of cash paid or payable for the account of the borrower. The term includes any charge, fee, or expense that is financed by the borrower at origination of the loan or during the term of the loan.

"Refinance" means a loan the proceeds of which are used in whole or in part to pay the unpaid balance of a prior loan made by the same licensee or any employee or affiliate of the licensee to the same borrower under the CILA.

"Residential mortgage" means any credit transaction secured by an interest in the covered borrower's dwelling, including a transaction to finance the purchase or initial construction of a dwelling, any refinance transaction, home equity loan or home equity line of credit, or reverse mortgage.

"State," in the context of referring to states in addition to Ohio, means any state of the United States, the District of Columbia, any U.S. territory, and Puerto Rico, Guam, American Samoa, the Pacific Islands, the Virgin Islands, and the northern Mariana Islands.¹²⁴

"Superintendent of Financial Institutions" includes the Deputy Superintendent for Consumer Finance.¹²⁵

COMMENT

1. The impact of these provisions are unclear, as the bill's provisions do not apply to a credit transaction made without a CILA license or to credit transactions with an interest rate in excess of that permitted under CILA.¹²⁶

2. It is unclear under what circumstances this provision would be used. The provision requires the licensee to provide a notice relating to a nonamortized or partially amortized interest bearing loan. The CILA appears to apply only to amortized loans – loans repaid in equal installments.¹²⁷

¹²⁴ R.C. 1321.62(V) through (BB).

¹²⁵ R.C. 1321.62(CC) and R.C. 1181.21, by reference.

¹²⁶ R.C. 1321.63(A)(1), 1321.631(A), and 1321.69(F).

¹²⁷ R.C. 1321.631(C) and 1321.67(D)(4).

HISTORY

ACTION

DATE

Introduced

09-20-16

H0598-I-131.docx/ks

