Daniel M. DeSantis *Legislative Service Commission*

H.B. 545

127th General Assembly
(As Introduced)

Rep. Widener

BILL SUMMARY

- Repeals the current Check-Cashing Lender Law in its entirety and enacts the bulk of the repealed law's provision with changes in a new Short-Term Lender Law.
- Requires the Superintendent of Financial Institutions to create a statewide database of loans made by licensed short-term lenders.
- Creates a short-term installment loan linked deposit program.
- Revises the authority of state officers with respect to making appointments to the Consumer Finance Education Board and expands the Board's responsibilities.
- Establishes the Financial Literacy Education Fund.
- Authorizes state chartered banks, savings and loans, and credit unions to make loans per the terms and conditions of the Short-Term Lender Law.
- Provides special conditions for nonprofit corporations to obtain a license under the Short-Term Lender Law.
- Establishes that a violation of the Short-Term Lender Law is a violation of the Ohio Consumer Sales Practices Act.

TABLE OF CONTENTS

CONTENT AND OPERATION

Check-Cashing Lender Law

Under existing law, in order to originate loans in Ohio, a "check-cashing lender" must be licensed by the Superintendent of Financial Institutions (R.C. 1315.36). There currently is a two-tier system of licensing for check-cashing businesses in Ohio. A business licensed under R.C. 1315.23 only may cash checks and pay its customers the full amount of the check less any charges permitted by law. A check-cashing business, however, that wants also to make loans must obtain a second license under R.C. 1315.35 to 1315.44.

The bill repeals the current Check-Cashing Lender Law (R.C. 1315.35 to 1315.44), and enacts the Short-Term Lender Law (R.C. 1321.35 to 1321.48), which is based on the Check-Cashing Lender Law, but with a number of substantive changes.

A licensee under the new Short-Term Lender Law will not be required also to hold a check-cashing license. The bill defines the loans offered by licensees

under the bill as "short-term loans," and makes the following changes to the current Check-Cashing Lender Law provisions being carried over to the proposed Short-Term Lender Law:

Licensing

(R.C. 1321.36)

Current law includes a general provision that prohibits a check-cashing business from making loans unless the business obtains a license to make loans under R.C. 1315.35 to 1315.44 (Check-Cashing Lender Law).

The bill prohibits a person from engaging in the business of making short-term loans, defined as "a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code" (R.C. 1321.35), to a borrower in Ohio, or, in whole or in part, making, offering, or brokering a loan, or assisting a borrower to obtain such a loan, without having obtained a license from the Superintendent of Financial Institutions. The bill specifically prohibits a licensee from making, offering, or brokering a loan, or assisting a borrower to obtain a loan, when the borrower is not physically present in the licensee's business location, thereby prohibiting such loans from being processed via correspondence over the Internet, by telephone, or by mail. The bill also specifically prohibits a person not located in Ohio from making short-term loans in Ohio.

License fees, net worth requirements, and non-profit corporation exemptions

(R.C. 1321.37)

Under current law, the original or renewal license fee for a check-cashing lender license is $500 (R.C. 1315.37). An applicant also must possess a check-cashing license, for which the annual license fee is $500 (R.C. 1315.22).

The bill requires that an application for an original or renewal short-term loan license be accompanied by a license fee of $1,000. The bill also sets forth that a corporation that is incorporated under Ohio's Nonprofit Corporation Law (Chapter 1702. of the Revised Code), may pay a license fee that is one-half of what is otherwise required.

Current law requires that applicants for a check-cashing lender license be financially sound and have a net worth of not less than $100,000 (R.C. 1315.37(B)(3)). The bill includes this same requirement for applicants for a short-term lender license but, reduces the net worth requirements for applicants that are nonprofit corporations, requiring such entities to have a net worth of not less than $50,000.

Criminal background checks

(R.C. 109.572(A)(12) and 1321.37(B))

The bill requires the Superintendent of Financial Institutions to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) (and the BCII to honor the request, R.C. 109.572) conduct a criminal records check for each applicant for an original or renewal short-term loan license.

If the applicant meets all the other criteria under the law, the Superintendent of Financial Institutions must approve the license unless the applicant or any senior officer, or partner of the applicant, has pleaded guilty to or been convicted of a criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities or any violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offenses listed above. However, if the applicant or other persons have pleaded guilty to or been convicted of any such offense, other than theft, the Superintendent may not consider the offense if the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction show that the applicant or other person is honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will commit such an offense again.

Also, the Superintendent can deny an application for an original or renewal license if the Superintendent finds that the applicant knowingly or repeatedly contracts with or employs persons to directly engage in lending activities who have been convicted of a felony offense listed above.

Conditions for a short-term loan (interest rates and fees)

(R.C. 1321.39 and 1321.40)

Under the current Check-Cashing Lender Law, a licensee may charge a loan origination fee of $5 per $50 of the amount of the loan up to the first $500 of the loan and $3.75 per $50 of the amount of the loan between $500 and $800, plus interest at a rate of 5% per month or fraction of a month. Also, a licensee may charge an amount not exceeding $20, plus any amount passed on from a financial institution, for each returned or dishonored check, share draft, or negotiable order of withdrawal.

The bill sets forth that a short-term lender may charge interest not to exceed an annual percentage rate of 28%. For the purpose of the Short-Term Lender Law,

interest is defined as "all charges payable directly or indirectly by a borrower to a licensee as a condition to a loan, including fees, loan origination charges, service charges, renewal charges, credit insurance premiums, and any ancillary product sold in connection with a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code" (R.C. 1321.35). The bill also limits the lender to one check collection charge per loan not exceeding $20.

Under the bill, the amount of a short-term loan may not exceed $500 (current law limits check-cashing lender loans to no more than $800).

Under the current Check-Cashing Lender Law, the duration of a loan may not exceed six months. The bill does not establish a maximum duration for short-term loans, but specifies that such loans may not have a duration of less than 31 days.

New prohibitions on short-term lenders

(R.C. 1321.41)

Under current law, a check-cashing lender is prohibited from making a loan to a borrower if there exists an outstanding loan between that check-cashing business and the borrower. Also, check-cashing lenders are prohibited from collecting treble damages in connection with a civil action to collect a loan after default (R.C. 1315.41).

The bill additionally prohibits a short-term loan licensee from engaging in any of the following practices:

- Making a loan to a borrower if there exists a loan between any licensee and that borrower, if a loan between any licensee and that borrower was terminated on the same business day, if the borrower has more than one outstanding loan or if the loan would obligate the borrower to repay a total amount of more than $500 to licensees, or indebt the borrower, to licensees, for an amount that is more than 25% of the borrower's gross monthly salary not including bonus, overtime, or other such compensation, based on a payroll verification statement presented by the borrower.

- Bring or threaten to bring an action or complaint against the borrower for the borrower's failure to comply with the terms of the loan contract solely due to the check, negotiable order of withdrawal, share draft, or negotiable instrument being returned or dishonored for insufficient funds. The bill stipulates that its provisions do not prohibit such conduct, action, or complaint if the borrower has intentionally engaged

in fraud by, including but not limited to, closing or using any closed or false account to evade payment.

- Making a short-term loan for the purposes of retiring an existing short-term loan between any short-term lender business and that borrower.

- Requiring the borrower to waive the borrower's right to legal recourse under any otherwise applicable provision of state or federal law.

- Accepting the title of a vehicle, real property, physical assets, or other collateral as security for the obligation.

- Engaging in any device or subterfuge to evade the requirements of the Short-Term Lender Law including assisting a borrower to obtain a loan at a rate of interest that would be prohibited by the bill's provisions, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.

- Assessing or charging a borrower a fee for prepaying a loan in full prior to the maturity date.

- Failing to comply with the debt collection practices proscribed by the bill (R.C. 1321.45).

- Recommending to a borrower that the borrower obtain a loan for a dollar amount that is higher than the borrower has requested.

- Making a loan to a borrower who has received two loans within the previous 90 days from licensees, unless the borrower has completed during that period a financial literacy program approved by the Superintendent.

- Drafting funds electronically from any depository financial institution in this state, or billing any credit card issued by such an institution. The bill specifically states, however, that conversion of a negotiable instrument into an electronic form for processing through the automated clearing house system, for the purposes of the Short-Term Lender Law, is not considered an electronic draft.

- Making, publishing, or otherwise disseminating, directly or indirectly, any misleading or false advertisement, or engaging in any other deceptive trade practice.

- Offering any incentive to a borrower in exchange for the borrower taking out multiple loans over any period of time, or providing a short-term loan at no charge or at a discounted charge as compensation for any previous or future business.

- Making a loan to a borrower if the borrower has received a total of four or more loans, from all licensees combined, in the calendar year.

- Presenting a check, negotiable order of withdrawal, share draft, or other negotiable instrument, that has been previously presented by the licensee and subsequently returned or dishonored for any reason, without prior written approval from the borrower.

- Changing the check number, or in any other way altering a check, negotiable order of withdrawal, or share draft, prior to submitting such check, negotiable order of withdrawal or share draft for processing through the automated clearing house system, or submitting false information about any check, negotiable order of withdrawal or share draft to the automated clearing house system.

A person who violates any of these provisions is guilty of a misdemeanor of the first degree (R.C. 1321.99, not in the bill).

Statewide database of loans

(R.C. 1321.46)

Within 120 days of the bill's effective date, the bill requires that the Superintendent of Financial Institutions develop, implement, and maintain a statewide common database, accessible at all times to short-term lenders through an Internet connection. Licensees must submit the required borrower and loan data in a format as the Superintendent prescribes by rule and must use the database to determine if a borrower is eligible for a loan.

In the period of time from the effective date of the bill until the database is available, a short-term lender must require a borrower to sign a written declaration confirming that the borrower is eligible to receive a new loan (Section 4).

The bill stipulates that information in the database, submitted for inclusion in the database, or archived by the Superintendent, is not a public record (R.C. 1321.46(E)). Also a short-term lender may rely on the information contained in the database as accurate and not be subject to any administrative penalty or civil liability as a result of a mistaken reliance on inaccurate information contained in the database (R.C. 1321.46(D)).

Database administration

The common database required by the bill may be operated by the Superintendent or by a third party selected by the Superintendent pursuant to standard procurement rules outlined in R.C. Chapter 125. The Superintendent must adopt rules to ensure that the database is used by licensees. The rules must include all of the following requirements:

Data must be retained in the database only as required to ensure a licensee compliance with the bill's provisions;

Information that identifies a borrower is deleted from the database, on a regular and routine basis, 12 months after the transaction is closed;

The archiving of deleted data, should the Superintendent determine that archiving is necessary for the enforcement of this section;

A prohibition against the database ranking the credit worthiness of a borrower and a limitation allowing the database only to be used to determine a borrower's eligibility or ineligibility for a loan based on the provisions of this chapter;

Data collected pursuant to the bill's provisions be used only as prescribed in the bill and for no other purpose.

Database operator responsibilities

The database operator also must do all of the following:

Establish and maintain a process for responding to transaction verification requests due to technical difficulties with the database that prevent the licensee from accessing the database through the Internet;

Provide accurate and secure receipt, transmission, and storage of borrower data;

Designate a transaction as closed within one business day of receiving notification from a licensee;

Take all reasonable measures to ensure the confidentiality of the database and to prevent identity theft.

The bill authorizes the database operator (pursuant to a rule the Superintendent adopts) to impose a per transaction fee for the actual costs of entering, accessing, and maintaining data in the database, provided that the fee is

approved by the Superintendent. The fee must be payable to the database operator in a manner prescribed by the Superintendent. A licensee may not charge a customer all or part of the fee (R.C. 1321.46(F)).

Debt collection practices for short-term lenders

(R.C. 1321.45)

The bill establishes a comprehensive list of debt collection practices that short-term lenders must follow when collecting on any debt resulting from a short-term loan. For the purpose of these debt collection practices, "debt collector" is defined as:

> a licensee, officer, employee, or agent of a licensee, or any person acting as a debt collector for a licensee, or any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt resulting from a short-term loan made by a licensee (R.C. 1321.45(A)(1)).

When communicating with any person other than the borrower for the purpose of acquiring location information about the borrower, a debt collector must identify self, state that the purpose for the communication is to confirm or correct location information concerning a person, and, only if expressly requested, identify the debt collector's employer. The debt collector must not do any of the following:

(1) State that the person for whom location information is being sought is a borrower or owes any debt;

(2) Communicate with any person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(3) Communicate by post card;

(4) Use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the communication relates to the collection of a debt;

(5) After the debt collector knows the borrower is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person

other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector (R.C. 1321.45(B)).

Under the bill, a debt collector, without the prior consent of the borrower given directly to the debt collector or without the express permission of a court of competent jurisdiction, may not communicate with a borrower in connection with the collection of any debt:

(1) At any unusual time or place or a time or place known or which should be known to be inconvenient to the borrower. In the absence of knowledge of circumstances to the contrary, a debt collector must assume that the convenient time for communicating with a borrower is after 8 a.m. eastern standard time and before 9 p.m. eastern standard time at the borrower's location.

(2) If the debt collector knows the borrower is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the borrower;

(3) At the borrower's place of employment if the debt collector knows or has reason to know that the borrower's employer prohibits the borrower from receiving such communication (R.C. 1321.45(C)).

The bill also prohibits a debt collector, when communicating with a third party without the prior consent of the borrower given directly to the debt collector, or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, from communicating, in connection with the collection of any debt, with any person other than the borrower, the borrower's attorney, a consumer reporting agency if otherwise permitted by law, or the attorney of the debt collector (R.C. 1321.45(D)).

If a borrower provides written notification, to a licensee or a debt collector, that the borrower refuses to pay a debt or that the borrower wishes the debt collector to cease further communication with the borrower, the bill prohibits the debt collector from communicating further with the borrower with respect to the debt, except:

(1) To advise the borrower that the debt collector's further efforts are being terminated;

(2) To notify the borrower that the debt collector or licensee may invoke specified remedies that are ordinarily invoked by such debt collector or licensee;

(3) Where applicable, to notify the borrower that the debt collector or licensee intends to invoke a specified remedy. If such notice from the borrower is made by mail, notification shall be complete upon receipt (R.C. 1321.45(E)).

The bill prohibits a debt collector from engaging in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, any of the following:

(1) Using or threatening to use violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) Using obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) Publishing a list of borrowers who allegedly refuse to pay debts, except to a consumer-reporting agency;

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number (R.C. 1321.45(F)).

A debt collector also may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, any of the following:

(1) Falsely representing or implying that the debt collector is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or facsimile thereof;

(2) Falsely representing the character, amount, or legal status of any debt, or any services rendered, or compensation which may be lawfully received by any debt collector for the collection of a debt;

(3) Falsely representing or implying that any individual is an attorney or that any communication is from an attorney;

(4) Representing or implying that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector intends to take such action;

(5) Threatening to take any action that cannot legally be taken or that is not intended to be taken;

(6) Falsely representing or implying that a sale, referral, or other transfer of any interest in a debt shall cause the borrower to lose any claim or defense to payment of the debt;

(7) Falsely representing or implying that the borrower committed any crime or other conduct in order to disgrace the borrower;

(8) Communicating or threatening to communicate to any person credit information that is known or that should be known to be false, including the failure to communicate that a disputed debt is disputed;

(9) Using or distributing any written communication that simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or that creates a false impression as to its source, authorization, or approval;

(10) Using any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a borrower;

(11) Failing to disclose in the initial written communication with the borrower, and in addition, if the initial communication with the borrower is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except in a formal pleading made in connection with a legal action;

(12) Falsely representing or implying that accounts have been turned over to innocent purchasers for value;

(13) Falsely representing or implying that documents are legal process;

(14) Using any business, company, or organization name other than the true name of the debt collector's business, company, or organization;

(15) Falsely representing or implying that documents are not legal process forms or do not require action by the consumer;

(16) Falsely representing or implying that a debt collector operates or is employed by a consumer reporting agency (R.C. 1321.45(G)).

A debt collector also is prohibited by the bill from using unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, any of the following:

(1) Collecting any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) Accepting from any person a check or other payment instrument postdated by more than five days unless the person is notified in writing of the debt collector's intent to deposit the check or instrument not more than ten nor less than three business days prior to deposit;

(3) Soliciting any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument;

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. The charges include, but are not limited to, collect telephone calls and telegram fees;

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if there is no present right to possession of the property claimed as collateral through an enforceable security interest, there is no present intention to take possession of the property, or the property is exempt by law from dispossession or disablement;

(7) Communicating with a borrower regarding a debt by post card;

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a borrower by use of the mails or by telegram, except that a debt collector may use the collector's business name if the name does not indicate that the collector is in the debt collection business;

(9) Designing, compiling, and furnishing any form knowing that the form would be used to create the false belief in a borrower that a person other than the licensee is participating in the collection of or in an attempt to collect a debt the borrower allegedly owes the creditor, when in fact the person is not so participating (R.C. 1321.45(H)).

In addition to the requirements as outlined above, a debt collector must follow the practices set forth in the federal "Fair Debt Collection Practices Act," 91 Stat. 874 (1977), sections 15 U.S.C. 1692b, 15 U.S.C. 1692c, 15 U.S.C. 1692d, 15 U.S.C. 1692e, and 15 U.S.C. 1692f, as those sections of federal law exist on the effective date of the bill. The bill stipulates, however, that in the event of a conflict between the described practices in the federal act and the described practices in the bill, the bill's provisions will prevail (R.C. 1321.45(I)).

Superintendent reporting requirements

(R.C. 1321.48)

The bill requires the Superintendent to report semiannually to the Governor and the General Assembly on the operations of the Division of Financial Institutions with respect to the following:

(1) Enforcement actions instituted by the Superintendent for a violation of or failure to comply with any provision of the Short-Term Lender Law, and the final dispositions of each such enforcement action;

(2) Suspensions, revocations, or refusals to issue or renew licenses under the Short-Term Lender Law.

Such reports may not include information that, pursuant to the bill, is deemed confidential. The following information will be considered confidential:

(1) Examination information, and any information leading to or arising from an examination;

(2) Investigation information, and any information arising from or leading to an investigation.

This information will remain confidential for all purposes except when it is 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 also may be introduced into evidence or disclosed when, and in the manner, authorized by R.C. 1181.25 (discretionary authority granted to the Superintendent to disclose in certain other enforcement actions, court proceedings, or to other regulatory agencies as appropriate).

All application information, except 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 such cards, and criminal background information, is a public record as defined in the Ohio Public Records Law.

Duties and standards of care for short-term lenders

(R.C. 1321.47)

The bill establishes the following duties and standards of care to be followed by licensees:

(1) Follow reasonable and lawful instructions from the borrower;

(2) Act with reasonable skill, care, and diligence;

(3) Act in good faith and fair dealing in any transaction or practice or course of business in connection with a short-term loan.

The bill prohibits a licensee from waiving or modifying these standards of care.

In the event that a borrower is injured by a licensee's violation of the stated duties and standards of care, the bill authorizes the borrower to bring an action for recovery of damages. Damages awarded must be not less than all compensation paid directly or indirectly to a licensee from any source, plus reasonable attorney's fees and court costs. The borrower also may be awarded punitive damages.

Enforcement of Short-Term Lender Law

(R.C. 1321.44)

Under the current Check-Cashing Lender Law, the Superintendent of Financial Institutions may make any investigation and conduct any hearings to determine if a licensee has violated the Check-Cashing Lender Law. The bill provides the same authority to the Superintendent with respect to the Short-Term Lender Law.

The bill authorizes the Superintendent or a borrower to bring directly an action for a violation of the Short-Term Lender Law. The prosecuting attorney of the county in which the action may be brought may bring an action 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.

The bill authorizes the Superintendent to initiate criminal proceedings for a violation of the Short-Term Lender Law by presenting any evidence of criminal violation to the prosecuting attorney of the county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the Superintendent must present any evidence

of criminal violations to the Attorney General, who may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before such grand juries. The bill stipulates that these powers of the Attorney General are in addition to any other applicable powers of the Attorney General.

Under the bill, the prosecuting attorney of the county in which an alleged offense may be prosecuted also may initiate criminal proceedings for a violation of the Short-Term Lender Law. In order to initiate criminal proceedings, the Attorney General first must present any evidence of criminal violations to the prosecuting attorney of the county in which the alleged offense may be prosecuted. If, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations, the Attorney General then may proceed in the prosecution.

The bill requires that, when a judgment for a violation of the Short-Term Lender Law becomes final, the clerk of court must mail a copy of the judgment, including supporting opinions, to the Superintendent.

Short-term installment loan linked deposit program

(R.C. 135.63, 135.68, 135.69, and 135.70)

The bill establishes the short-term installment loan linked deposit program. Under the program, an eligible lending institution, defined as a public depository eligible to make loans, may enter into a deposit agreement with the Treasurer of State wherein the public depository will receive a linked deposit, in the form of a certificate of deposit at up to 3% below current market rates, provided the depository agrees to lend the value of the linked deposit in the form of short-term installment loans. For the purpose of the program, "short-term installment loan" is defined as follows:

> an extension of credit that does not exceed $800, the duration of which is not less than ninety days and six installments, and the interest on the loan is calculated in compliance with 15 U.S.C. 1606 (the federal "Truth in Lending Act"), and does not exceed an annual percentage rate of 28%

The provisions of the program are otherwise identical to the provisions governing the various other linked deposit loan programs already authorized by law (R.C. Chapter 135.).

The bill stipulates that the state and the Treasurer of State are not liable to any eligible lending institution in any manner for payment of principal or interest on a loan made pursuant to the short-term installment loan linked deposit program. Any delay in payments or default on the part of an individual, who received a loan made pursuant to the short-term installment loan linked deposit program from a lending institution, does not in any manner affect the deposit agreement between the lending institution and the Treasurer of State (R.C. 135.70(E)).

Deposit agreement

(R.C. 135.69)

In order to receive a short-term installment loan linked deposit, an eligible lending institution must forward to the Treasurer a small loan linked deposit package in the form and manner as prescribed by the Treasurer, and must enter into a deposit agreement with the Treasurer of State. The agreement must reflect the market conditions prevailing in the eligible lending institution's lending area, must include provisions for certificates of deposit to be placed for any maturity considered appropriate by the Treasurer, and may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit.

Treasurer approval

(R.C. 135.70)

The Treasurer may accept or reject a short-term installment loan linked deposit loan package, or any portion of a package, submitted by an eligible lending institution, based on the Treasurer's evaluation of the package and the amount of state funds to be deposited. The Treasurer may place certificates of deposit with the eligible lending institution upon acceptance of the package, or when necessary, prior to acceptance of the package.

The bill requires the Treasurer to develop guidelines necessary to implement the program and report annually on the program to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The report must set forth the short-term installment loan linked deposits made by the Treasurer during the year, the number of short-term installment loans made by each institution, categorized by postal zip code, and a representation of the number or percentage of loans pursuant to the program that were paid late or are in default.

Consumer Finance Education Board

(R.C. 1349.71 and 1349.72)

S.B. 185 of the 126th General Assembly created the Consumer Finance Education Board and charged the Board with the responsibility to carry out certain functions related to financial literacy education. S.B. 185 called for appointments to the Board to be made jointly by the Speaker of the House, the President of the Senate, and the Governor. Appointments have not been made and the Board has never convened. The bill revises the appointment authority by requiring the Speaker of the House, the President of the Senate, and the Governor to each individually appoint four Board members.

The bill additionally requires the Board to analyze and investigate the policies and practices of state agencies, nonprofit entities, and businesses regarding counseling and education for small loan borrowers, and requires the Board to coordinate and provide resources and assistance to those entities for small loan borrower counseling and education.

Financial Literacy Education Fund

(R.C. 121.085 and 1321.21)

Under continuing law, charges, penalties, and forfeitures paid to the Superintendent of Financial Institutions by check-cashing lenders, small loan licensees, mortgage brokers, loan officers, and certain other entities regulated by the Superintendent, are paid into the state treasury to the credit of the Consumer Finance Fund.

The bill establishes, within the state treasury, the Financial Literacy Education Fund and requires the Director of Budget and Management to transfer 5% of all charges, penalties, and forfeitures received in the Consumer Finance Fund to the new Financial Literacy Education Fund. The bill stipulates that the Fund is to be used to support various adult financial literacy education programs developed or implemented by the Director of Commerce, who must administer the Fund and adopt rules for the distribution of Fund moneys. The bill also requires the Director of Budget and Management to, within 30 days of the effective date of the bill, to make a one time transfer of 5% of the balance of the Consumer Finance Fund to the Financial Literacy Education Fund (Section 6).

The bill specifies that at least one-half of the education programs developed or implemented and offered to the public must be presented by or available at public community colleges or "state institutions" throughout the state.

The Director also must deliver to the General Assembly and the Governor an annual report that includes an outline of each education program developed or implemented, the number of individuals who were educated by each program, and the accounting for all funds distributed.

Ohio Consumer Sales Practices Act (OCSPA)

(R.C. 1345.01)

The OCSPA prohibits "unfair or deceptive acts or practices" by suppliers in connection with consumer transactions. Therefore, for an entity to be subject to OCSPA, the transaction itself must fall within the definition of "consumer transaction." Under OCSPA, "consumer transaction" is defined as a "sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household . . ." (R.C.1345.01).

There is currently some question as to whether under Ohio law entities licensed under the Check-Cashing Lender Law are subject to the OCSPA. The definition of consumer transaction in OCSPA exempts transactions between "dealers in intangibles" (R.C. 5725.01), which includes persons engaged in the business primarily of lending money. Pursuant to R.C. 1315.44, however, a violation of the Check-Cashing Lender Law is deemed an unfair or deceptive act or practice in violation of OCSPA.

The bill revises the definition of "consumer transaction" in the OCSPA to include transactions involving a loan made pursuant to the proposed new Short-Term Lender Law. Furthermore, a violation of the Short-Term Lender Law is deemed an unfair or deceptive act or practice in violation of OCSPA, and a borrower injured by such a violation has a cause of action and is entitled to the same relief available to a consumer.

Banks, savings and loans, and credit unions

(R.C. 1109.20, 1151.29, and 1733.25)

Under the bill, banks, savings and loan associations, and credit unions, which are chartered by the state of Ohio, are authorized to make unsecured loans that meet the conditions of the Short-Term Lender Law.

HISTORY

ACTION	DATE
Introduced	04-29-08

H0545-I-127.doc/jc