



# Ohio Legislative Service Commission

## Bill Analysis

Daniel M. DeSantis

### H.B. 209

128th General Assembly  
(As Introduced)

**Reps.** Lundy, Foley, Murray, Hagan, Phillips, Skindell, Stewart, Harris, Fende, Newcomb, Okey, Celeste, Harwood

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## BILL SUMMARY

- Prohibits licensees under the Small Loan Law (R.C. 1321.01 to 1321.19) and registrants under the Mortgage Loan Law (R.C. 1321.51 to 1321.60) from making a loan of \$1,000 or less that will obligate the borrower to pay more than 28% APR unless the term of the loan is greater than three months or the loan contract requires three or more installments.
- Provides that whoever "willfully" violates the prohibition against loans of \$1,000 or less with a 28% APR (1) must forfeit to the borrower twice the amount of interest contracted for (Small Loan Law) or the amount of interest paid by the borrower (Mortgage Loan Law), and (2) will be subject to a fine of not less than \$500 nor more than \$1,000.
- Increases the fine for certain other violations regarding the Mortgage Loan Law of not less than \$100 nor more than \$500 to not less than \$500 nor more than \$1,000.
- Specifies that the current prohibition on licensees under the Small Loan Law and registrants under the Mortgage Loan Law from conducting business in a place where any "other business" is solicited or engaged in if the nature of that business is to conceal evasion of those lending laws, includes any business conducted by a registered credit services organization, a licensed check-cashing business, a person engaged in the practice of debt adjusting, or a person who is involved in offering lease-purchase agreements.
- Amends the Small Loan Law to specify that persons making certain business loans are exempt from its licensing requirements, but specifies that, if a licensee under that law or an affiliate of a licensee makes a business loan of \$5,000 or less, the loan must conform with the interest and fee limitations under that law as amended by the bill.

- Prohibits licensees under the Check-Cashing Business Law and their affiliates, licensees under the Small Loan Law, and registrants under the Mortgage Loan Law from charging or receiving a fee for cashing a proceeds check or money order that was disbursed to fund a loan made by the licensee or an affiliate of the licensee.
- Prohibits a licensee under the Small Loan Law and a registrant under the Mortgage Loan Law from (1) requiring a borrower to cash a loan proceeds check or money order at their business, at an affiliate, or at any specified third party, and (2) seeking or obtaining compensation from any affiliate or third party that provides check-cashing services to cash a proceeds check or money order disbursed to fund a loan.
- Imposes on licensees under the Small Loan Law a fine of not less than \$100 nor more than \$500, or imprisonment for not more than six months, or both, for a violation of those check-cashing prohibitions and imposes on registrants under the Mortgage Loan Law a fine of not less than \$500 but not more than \$1,000 for a violation of those prohibitions.
- Amends the civil usury statute to remove a provision that exempts from the civil usury limit loans where "the instrument is payable on demand or in one installment and is not secured by household furnishings or other goods used for personal, family, or household purposes" with the result that a lender making such a loan, and wishing to charge more than the civil usury rate of 8%, would need to be otherwise authorized by law to do so.
- Establishes that certain violations of the Small Loan Law or the Mortgage Loan Law, when the violation involves a loan of \$1,000 or less, constitute an unfair or deceptive act or practice under the Ohio Consumer Sales Practices Act and are therefore subject to enforcement actions by the Attorney General.
- Prohibits a person not located in Ohio from making a loan to a borrower in Ohio from an office not located in Ohio under the Small Loan Law or the Mortgage Loan Law, unless the borrower physically visits the out-of-state office and obtains the loan disbursement there and makes violation of the prohibition a fifth degree felony.
- Prohibits lenders operating under the Small Loan Law or the Mortgage Loan Law from engaging in certain debt collection practices designated by the bill as unfair, deceptive, or unconscionable and establishes that a violation of a prohibited practice is a violation of the Ohio Consumer Sales Practices Act.
- Prohibits a person who offers lease-purchase agreements, a debt adjuster, or a credit service organization, from engaging in any fraudulent or deceptive act, practice, or course of business, including knowingly acting in or abetting a scheme to create an

evasion of restrictions on fees or charges set forth under the Small Loan Law, Short-Term Lender Law, or the Mortgage Loan Law.

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## CONTENT AND OPERATION

### Interest rate limit on loans of \$1,000 or less

#### Prohibition

(R.C. 1321.13, 1321.131, 1321.15, 1321.57, 1321.571, and 1321.59)

Under current law, licensees under the Small Loan Law may make loans in amounts of up to \$5,000 and charge interest at 28% annual percentage rate (APR) for loans of \$1,000 or less and 22% APR for loans over \$1,000. In addition, a licensee, for loans over \$1,000 and open-end loans, can agree with a borrower to charge up to 25% APR. In addition, licensees may charge loan origination fees of up to \$15 or 1% of the principal amount on loans of \$500 or less; \$30 or 1% on loans of greater than \$500. Similarly, registrants under the Mortgage Loan Law, which are not limited in the maximum amount of a loan, may charge interest up to 21% APR. Interest of up to 25% APR may be imposed if the borrower agrees to it. Loan origination fees may be imposed regarding unsecured loans of up to \$15 on loans under \$500; up to \$30 for loans of at least \$500 but less than \$1,000; up to \$100 for loans of at least \$1,000 but less than \$5,000; and up to \$250 or 1% of the principal amount of the loan, whichever is greater, for loans of at least \$5,000. Loan origination fees on secured loans are up to \$15 for loans less than \$500; up to \$30 for loans of \$500 to less than \$1,000; up to \$100 for

loans of \$1,000 to less than \$2,000; up to \$200 for loans of \$2,000 to less than \$5,000; and up to \$250 or 1% of the principal amount, whichever is greater, for loans of at least \$5,000. Furthermore, a registrant under the Mortgage Loan Law may charge a \$10 credit investigation fee.

The bill modifies both the Small Loan Law and the Mortgage Loan Law to prohibit a licensee or registrant from making a loan of \$1,000 or less that will obligate the borrower to pay more than 28% APR, as calculated under the federal Truth in Lending Act, unless the term of the loan is greater than three months or the loan contract requires the borrower to repay the loan in three or more monthly installments of substantially equal amounts. The federal Truth in Lending Act (see **COMMENT 1**) requires that the APR calculation include "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended" (15 U.S.C. 1605). Therefore, for a loan as described above, a licensee or registrant would be prohibited from charging a loan origination fee and certain other fees that would cause the finance charge for the loan to exceed 28% APR.

### **Penalty**

(R.C. 1321.14 and 1321.56)

Provides that whoever "willfully" violates the interest rate prohibition regarding loans of \$1,000 or less must forfeit to the borrower twice the amount of interest contracted for (Small Loan Law) or the amount of interest paid by the borrower (Mortgage Loan Law), and will be subject to a fine (see "**Fines**" below).

### **Enforcement of Small Loan Law and Mortgage Loan Law violations under Consumer Sales Practices Act (CSPA); other enforcement measures**

(R.C. 1321.011, 1321.44, 1321.542, 1321.61, and 1345.01; R.C. 1321.541, not in the bill)

### **Current law**

#### **CSPA enforcement under the Short-Term Loan Law**

Under current law, violations of certain provisions of the recently enacted Short-Term Loan Law are deemed unfair or deceptive practices under the Consumer Sales Practices Act (CSPA). Those violations include, for example, making short-term loans without a license, making a loan under the Short-Term Loan Law exceeding \$500; or making a loan to a borrower who has received four or more loans from Short-Term Loan Law licensees in the calendar year.<sup>1</sup>

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<sup>1</sup> See R.C. 1321.41 for the complete list of violations.

Under the Short-Term Loan Law, a borrower injured by any such violation has a cause of action and is entitled to the same relief available to a consumer under the CSPA. Additionally, all powers and remedies available to the Attorney General under the CSPA are available to the Attorney General to take enforcement action regarding a violation.

The Superintendent of Financial Institutions, or a borrower, is authorized also to bring directly an action to enjoin a violation. The prosecuting attorney of the county in which the action may be brought may bring an action to enjoin a violation 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 Superintendent is also authorized to initiate criminal proceedings for a violation by presenting any evidence of criminal violations 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. These powers of the Attorney General are in addition to any other applicable powers of the Attorney General.

The prosecuting attorney of the county in which an alleged offense may be prosecuted also may initiate criminal proceedings for a violation.

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 with all the rights, privileges, and powers the prosecuting attorney would have.

When a judgment for a violation becomes final, the clerk of court must mail a copy of the judgment, including supporting opinions, to the Superintendent.

#### **Mortgage Loan Law enforcement**

With respect to the Mortgage Loan Law, the Attorney General has authority to directly bring an action to enjoin its violation. The prosecuting attorney of the county in which the action may be brought is authorized to bring an action to enjoin a violation of the Mortgage Loan Law only if the prosecuting attorney first presents 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.

A prosecuting attorney may directly initiate criminal proceedings for alleged criminal offenses of the Mortgage Loan Law. Also, the Attorney General may initiate criminal proceedings only if the Attorney General first presents evidence of criminal violations to the prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

### **Expanded enforcement provisions**

The bill revises the CSPA to include in the definition of "consumer transaction" all transactions involving a loan of \$1,000 or less made pursuant to the Small Loan Law or the Mortgage Loan Law. Consequently, with respect to such loans, licensees are subject to all of the applicable prohibitions under the CSPA. Furthermore, the bill applies the enforcement mechanisms described above applicable to the Short-Term Loan Law with respect to certain violations of the Small Loan Law and Mortgage Loan Law, when the violation involves a loan of \$1,000 or less. The specific violations subject to the expanded enforcement mechanism are as follows:

#### **Small Loan Law**

- Making a small loan without being properly licensed (R.C. 1321.02);
- Making a false, misleading, or deceptive advertisement (R.C. 1321.11, not in the bill);
- Concealing an evasion of the Small Loan Law through the use of another business, making a business loan that does not conform with law, conducting business under another name or in another place not on the license, taking a lien upon real estate as security for the loan unless the lien is created upon the filing or recording of a certificate of judgment, or using improper means to collect any claim (R.C. 1321.12) (see "**Other business for evasion**" and "**Business loans**," below);
- Making a loan in violation of interest and fee limitations in the Small Loan Law (R.C. 1321.13);
- Violating certain duties imposed on licensees, which duties generally deal with disclosures, contract provisions, and payments (R.C. 1321.14);
- Entering into more than one loan agreement with a borrower at the same time to obtain higher charges or to indebt a borrower more than \$5,000, or making a loan of \$1,000 or less that does not conform with the 28% APR

limitation provisions of the bill (R.C. 1321.15) (see "**Interest rate limit on loans of \$1,000 or less**," above);

- Violating the provisions of law governing loans with interstate aspects (R.C. 1321.17, not in the bill).<sup>2</sup>

### **Mortgage Loan Law**

- Making a loan without being properly licensed or as an out-of-state lender (R.C. 1321.52) (see "**Out-of-state lenders**," below);
- Concealing an evasion of the Small Loan Law through the use of another business (R.C. 1321.551);
- Making a loan that does not comply with the interest and fee limitations set forth in the Mortgage Loan Law (R.C. 1321.56, 1321.57, 1321.571, and 1321.59);
- Entering into more than one loan agreement with a borrower at the same time to obtain higher charges than are otherwise permitted, refusing to provide information regarding the amount required to pay a loan in full, paying or receiving excessive fees for brokering a loan secured by real estate, or making a loan of \$1,000 or less that does not conform with the 28% APR limitation provisions of the bill (R.C. 1321.59) (see "**Interest rate limit on loans of \$1,000 or less**," above);
- Engaging in certain prohibited debt collection practices (R.C. 1321.591);
- Making a false, misleading, or deceptive advertisement for a loan (R.C. 1321.60, not in the bill).

### **Other business for evasion**

(R.C. 1321.12, 1321.551, 1351.031, 4710.02, and 4712.07)

Under current law, licensees under the Small Loan Law and registrants under the Mortgage Loan Law are prohibited from conducting business in a place where any "other business" is solicited or engaged in if the nature of that business tends to conceal evasion of those lending laws. The bill includes as "other business" under those laws any business conducted by a credit services organization that is registered or required to be registered under Ohio law (see **COMMENT 2**), a licensed check-cashing business, a

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<sup>2</sup> This section generally addresses enforceability of such interstate aspect loans and does not appear to contain a prohibition. (R.C. 1321.17.)

person engaged in the practice of debt adjusting (see **COMMENT 3**), or a person who offers lease-purchase agreements (see **COMMENT 4**).

Furthermore, the bill prohibits a person who offers lease-purchase agreements, a debt adjuster, or a credit service organization, from engaging in any fraudulent or deceptive act, practice, or course of business, including knowingly acting in or abetting a scheme to create an evasion of restrictions on fees or charges set forth under the Small Loan Law, Short-Term Loan Law, or the Mortgage Loan Law.

## **Business loans**

(R.C. 1321.02, 1321.12, and 1343.01)

The bill amends the Small Loan Law to exclude from the coverage of the law persons making business loans to business associations, persons, partnerships, or trustees. Therefore, persons making such loans need not be licensed under the Small Loan Law. If, however, a licensee under the Small Loan Law or an affiliate of such a licensee makes a business loan of \$5,000 or less, the loan must conform with the interest and fee limitations under that law as amended by the bill.

## **Check-cashing fees**

(R.C. 1315.26, 1321.13, and 1321.57)

The bill prohibits licensees under the Check-Cashing Business Law or Small Loan Law, and a registrant under the Mortgage Loan Law from charging or receiving a fee for cashing a proceeds check or money order that was disbursed to fund a loan made by the licensee or registrant, as applicable. With respect to licensees under the Check-Cashing Business Law, the prohibition also applies to an affiliate of the licensee. The bill also prohibits a licensee under the Small Loan Law and a registrant under the Mortgage Loan Law from (1) requiring a borrower to cash such a check or money order at their business, at an affiliate, or at any specified third party, and (2) seeking or obtaining compensation from any affiliate or third party that provides check-cashing services to cash a proceeds check or money order disbursed to fund a loan.

## **Out-of-state lenders**

(R.C. 1321.02 and 1321.52)

The bill prohibits a person, not located in Ohio, from making a loan to a borrower in Ohio, from an office not located in Ohio, under the Small Loan Law or the Mortgage Loan Law. This prohibition does not prevent a business not located or



licensed in Ohio from lending funds to Ohio borrowers who physically visit the out-of-state office of the business and obtain the disbursement of loan funds at that location.

## Fines

(R.C. 1321.99)

Under current law, whoever violates the following provisions shall be fined not less than \$100 nor more than \$500:

- Making a loan that does not comply with the interest and fee limitations set forth in the Mortgage Loan Law (R.C. 1321.57, 1321.58 (not in the bill), and 1321.59);
- Entering into more than one contract with a borrower at the same time to obtain higher charges than is otherwise permitted, refusing to provide information regarding the amount required to pay a loan in full, or paying or receiving excessive fees for brokering a loan secured by real estate (R.C. 1321.59);
- Make a false, misleading, or deceptive advertisement (R.C. 1321.60, not in the bill).

The bill adds to the above list the violation of making a loan under the Small Loan Law or Mortgage Loan Law in an amount of \$1,000 or less, that does not conform to the 28% APR limitation provisions of the bill. The bill also adds violation of the prohibitions described in "**Check-cashing fees**," above, applicable to registrants under the Mortgage Loan Law to this fine category. The bill also increases the fine for all these violations to not less than \$500 nor more than \$1,000.

In addition, the bill provides that any person who violates a prohibition described under "**Out-of-state lenders**," above, is guilty of a fifth degree felony. Also, the bill subjects a person who violates the prohibitions described in "**Check-cashing fees**," above, that are applicable to licensees under the Small Loan Law to a fine of not less than \$100 nor more than \$500 or imprisonment for not more than six months, or both.<sup>3</sup>

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<sup>3</sup>The bill imposes different penalties regarding the check-cashing prohibitions depending on whether the violator is registered under the Mortgage Loan Law or is licensed under the Small Loan Law. A higher fine may be imposed on registrants, but a licensee may be subject to imprisonment in addition to a fine.

## Debt collection practices

(R.C. 1321.12, 1321.591, and 1321.61)

The bill prohibits Small Loan Law licensees and Mortgage Loan Law registrants from using unfair, deceptive, or unconscionable means to collect or attempt to collect any claim, which means include, but are not limited to, the following conduct:

- The collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and by law.
- Any communication with a consumer whenever it is known that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return telephone calls or discuss the obligation in question, or unless the attorney consents to direct communication with the consumer.
- Placing a telephone call or otherwise communicating by telephone with a consumer or third party, at any place, including a place of employment, falsely stating that the call is urgent or an emergency.
- Using profane or obscene language or language that is intended to unreasonably abuse the listener or reader.
- Placing telephone calls without disclosure of the caller's identity and with the intent to annoy, harass, or threaten any person at the number called.
- Causing expense to any person in the form of long distance telephone tolls, text messaging fees, or other charges incurred by a form of communication, by concealment of the true purpose of the communication.
- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times, or at times known to be inconvenient, with the intent to annoy, abuse, oppress, or threaten any person at the called number.

Furthermore, engaging in a prohibited debt collection practice on a loan of \$1,000 or less, is deemed to be an unfair or deceptive act or practice in violation of the CSPA

(see "**Enforcement of Small Loan Law and Mortgage Loan Law violations under Consumer Sales Practices Act (CSPA); other enforcement measures,**" above).

## **Civil usury**

(R.C. 1321.53, 1322.01, 1343.01, and 4712.01)

The bill amends the civil usury statute to remove a provision that exempts from the civil usury limit loans where "the instrument is payable on demand or in one installment and is not secured by household furnishings or other goods used for personal, family, or household purposes" with the result that a lender making such a loan, and wishing to charge more than the civil usury rate limit of 8%, would need to be otherwise authorized by law to do so.

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## **COMMENT**

1. The federal Truth in Lending Act (TILA) defines annual percentage rate in the case of any extension of credit other than under an open end credit plan, as "that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed" (15 U.S.C. 1606). Furthermore, under TILA, the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed. (15 U.S.C. 1605(a).)

2. Ohio law sets forth that a person who engages in any of certain activities specified in law is a "credit service organization" and must be registered with the Division of Financial Institutions (R.C. 4712.01 and 4712.02). Helping a person obtain an extension of credit, such as by brokering a loan, is one such activity.

3. Chapter 4710. of the Revised Code regulates the practice of debt adjusting. It sets forth duties of persons doing business in debt adjusting, which includes budget counseling, debt management or debt pooling services, or providing services to debtors in the management of their debt.

4. Chapter 1351. of the Revised Code regulates lease-purchase agreements, which are more commonly referred to as rent-to-own contracts. Under Ohio law, "lease-purchase agreement" means an agreement for the use of personal property by an individual primarily for personal, family, or household purposes for an initial period of four months or less that is automatically renewable with each lease payment after the initial period and that permits the lessee to acquire ownership of the property. It does not include any of the following:

- (1) A lease for agricultural, business, or commercial purposes;
- (2) A lease made to an organization;
- (3) A lease of money or intangible personal property;
- (4) A lease of a motor vehicle.

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## HISTORY

ACTION	DATE
Introduced	06-04-09

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