FILE

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September 11, 2008

SENT VIA FAX AND OVERNIGHT MAIL
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215
ATTN: Docketing

RE: *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code.* (Case No. 08-0723-AU-ORD)

Dear Sir or Madam:

CheckFreePay Corporation, submitted comments yesterday in the above-referenced matter. The enclosure to that letter was inadvertently omitted from the filing. Enclosed are the original and ten (10) copies to be appended to CheckFreePay's filing.

I apologize in advance for any inconvenience this oversight may have caused.

Respectfully submitted,

Jenny Ricci O'Donnell
Director, Regulatory Compliance

Enclosure

Bill Analysis

Legislative Service Commission

Sub. H.B. 545

127th General Assembly
(As Passed by the General Assembly)

Reps. **Widener, Koziura, Batchelder, Budish, D. Stewart, Boyd, DeBose, Driehaus, Dyer, Foley, Garrison, Gerberry, R. Hagan, Letson, Luckie, Lundy, Newcomb, Peterson, Skindell, Stebelton, Sykes, Wagner, Widowfield, Yates**

Sens. **Jacobson, Cafaro, Roberts, D. Miller, Fedor, R. Miller**

Effective date: September 1, 2008

ACT SUMMARY

- Repeals the Check-Cashing Lender Law and enacts the Short-Term Lender Law to regulate the making of certain short-term loans.
- Requires the Superintendent of Financial Institutions to create a statewide database of loans made by licensed short-term lenders if there are a certain number of such lenders.
- Creates a short-term installment loan linked deposit program.
- Eliminates the authority of credit unions to make certain high-cost, short-term loans.
- Further restricts the making of multiple loans under the Small Loan Law.
- Revises the manner in which appointments to the Consumer Finance Education Board are made and expands the Board's responsibilities.
- Establishes the Financial Literacy Education Fund.

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CONTENT AND OPERATION

Repeal of Check-Cashing Lender Law; enactment of Short-Term Lender Law

Under former law, there was a two-tier system of licensing for check-cashing businesses. A business licensed by the Superintendent of Financial Institutions as a "check-cashing business" could cash checks and pay its customers the full amount of the check, less any charges permitted by law. (See R.C. 1315.21 to 1315.30.) A check-cashing business that also wanted to originate loans in Ohio was required to obtain a second license from the Superintendent under the Check-Cashing Lender Law (R.C. 1315.35 to 1315.44). That license permitted the business to make loans not exceeding $800 for a period not exceeding six months.

The act repeals the Check-Cashing Lender Law, 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.[1]

A licensee under the new Short-Term Lender Law is not required to also hold a check-cashing license. The loans offered by licensees under the act are referred to as "short-term loans." The following paragraphs examine the requirements and restrictions that apply to the

making of short-term loans and the manner in which the new Short-Term Lender Law differs from the repealed Check-Cashing Lender Law.

License required

(R.C. 1321.36)

The act prohibits a person from engaging in the business of making short-term loans to a borrower in Ohio, or, in whole or in part, making, offering, or brokering a loan, or assisting a borrower in Ohio to obtain such a loan, without having obtained a license from the Superintendent of Financial Institutions.

The act 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. It also expressly prohibits (1) the making, offering, or brokering of a loan via the telephone, mail, or the Internet and (2) the making of a loan to a borrower in Ohio from an office not located in Ohio. However, a business not located or licensed in Ohio may lend funds to Ohio borrowers who physically visit the out-of-state office of the business and obtain the loan funds at that location.

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

(R.C. 1321.37)

Under former law, the original or renewal license fee for a check-cashing lender license could not exceed $500 per business location (R.C. 1315.37). A nonrefundable investigation fee of $200 was required to accompany an application for an original license. An applicant also was required to possess a check-cashing license, for which the annual license fee could not exceed $500 per business location (R.C. 1315.22).

The act requires that an application for an original or renewal short-term loan license be accompanied by a fee of $1,000 per business location. A nonrefundable investigation fee of $200 is also required for an original license. If the applicant for an original or renewal license is a nonprofit corporation incorporated under Ohio's Nonprofit Corporation Law (R.C. Chapter 1702.), the fee is $500 per business location.

As under the Check-Cashing Lender Law, all investigation and license fees paid to the Superintendent must be credited to the Consumer Finance Fund.[2]

Former law required 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 act includes the same requirement for applicants for a short-term lender license, but requires a net worth of not less than $50,000 for applicants that are nonprofit corporations.

Approval of license application

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

As under the Check-Cashing Lender Law, the Superintendent is required by the act to approve an application for an original or renewal license if the Superintendent finds all of the following:

(1) The applicant is financially sound and has the required amount of net worth (as described above);

(2) The financial responsibility, experience, reputation, and general fitness of the applicant are such as to warrant the belief that the business of making loans will be operated lawfully, honestly, and fairly and that the applicant is qualified to engage in the business of making loans; and

(3) The applicant has never had revoked a license to do business as a check-cashing business or a license to make loans under the Short-Term Lender Law or the Check-Cashing Lender Law (being repealed by the act).

Unlike former law, however, the act requires the Superintendent of Financial Institutions to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), or a vendor approved by BCII, conduct a criminal records check, based on the applicant's fingerprints, for each applicant for an original short-term loan license. With respect to applicants for a renewal license, criminal records checks are to be requested in accordance with a schedule determined by the Superintendent by rule. Criminal record information from the Federal Bureau of Investigation also must be obtained as part of the criminal records check. Additionally, the Superintendent of Financial Institutions is required to conduct a civil records check.

If the applicant meets all the other criteria under the law, the Superintendent of Financial Institutions must approve the license *unless* either of the following applies:

(1) 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.[3] However, if the applicant or any of those other persons has pleaded guilty to or been convicted of any such offense other than theft, the Superintendent cannot 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.

(2) The applicant or any senior officer or partner of the applicant has been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty. However, if the applicant or any of those other persons has been subject to such a judgment, 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 judgment 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 be subject to such a judgment again.

Also, the act permits the Superintendent to 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.

Denial of an application; hearing; fee return

(R.C. 1321.37(C))

If the Superintendent denies an original or renewal application, the Superintendent must issue a denial order, grant the applicant a hearing under the Administrative Procedure Act, and notify the applicant of the denial, the grounds for it, and the hearing opportunity. If the application is denied, the Superintendent must return the license fee but retain the investigation fee.

Surety bond

(R.C. 1321.37(D))

The act requires that a licensed short-term lender obtain and maintain in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. The bond must be in favor of the Superintendent and in the penal sum of at least $100,000 or, in the case of a nonprofit corporation, in the amount of $50,000. The term of the bond must coincide with the term of the license. A copy of the bond must also be filed with the Superintendent. The bond is to be for the exclusive benefit of any borrower injured by a violation of the Short-Term Lender Law by a licensee or any employee of a licensee.

Terms of license

(R.C. 1321.38)

A license issued by the Superintendent under the Short-Term Lending Law must state the address at which loans will be made and state the full name of the business. Each license must also be conspicuously posted in the place of business and is not transferable or assignable. Not more than one place of business can be maintained under the same license, but the Superintendent may issue additional licenses to the same applicant. A licensee cannot move the place of business to a location outside the original municipal corporation under the same license. When a license wants to change its place of business within the same municipal corporation, advance written notice of the move must be given to the Superintendent, who must provide, at no cost, a license for the new address.

Terms and conditions for making short-term loans

(R.C. 1321.39 and 1321.40)

The following chart compares the permissible fees and other terms and conditions applicable to loans made by check-cashing businesses under prior law and those made by short-term lenders under the act.

LOAN TERMS	CHECK-CASHING LENDER LAW (Former R.C. 1315.39 and 1315.40)	SHORT-TERM LENDER LAW (New R.C. 1321.39 and 1321.40)
Maximum loan amount	$800	$500
Duration of a loan	Not more than 6 months	Not less than 31 days
Contents of written loan contract	--Total amount of fees and charges;	--Same
	--Total amount of each payment, when each payment is due, and the total number of payments;	--Same
	--"WARNING: The rate of interest charged on this loan is higher than the average rate of interest charged by financial institutions on substantially similar loans."	--Same, but refers to the "cost of this loan" rather than "the rate of interest charged on this loan."
	--No provision regarding complaints about the lender.	--Statement that informs the borrower that complaints regarding the loan or lender may be submitted to the Department of Commerce, and includes the Department's telephone number and address.
	--The rate of interest, calculated both as an annual percentage rate (1) based on the principal of the loan and (2) based on the sum of the principal amount of the loan, the loan origination fee, and all other permissible fees and charges.	--Same, but only requires the rate of interest calculated under (2).
	--No provision regarding disclosures under federal law.	--Any disclosures required under the federal Truth in Lending Act.
	--No provision regarding extended payment plans.	--Statement offering the borrower an optional extended payment plan that may be invoked at any time before the maturity date of the loan. The plan is to allow the borrower to

		repay the balance by not less than 60 days from the original maturity date. No additional charges may be applied to the loan if the borrower enters into such a plan.[4]
Requirement that copy of loan contract be given to the borrower	No provision	Yes
Maximum interest rate	5% per month or fraction of a month on the unpaid principal	Annual percentage rate of 28% [5]
Check collection charges	Not exceeding $20 plus any amount passed from other financial institutions for each check returned for any reason	Same, but permits only one such charge per loan
Maximum loan origination fees	--$5 per $50 of the loan amount, up to $500 --$3.75 per $50 of the loan amount between $501 and $800	No provision
Other charges	Damages, costs, and disbursement to which the licensee may become entitled to by law in connection with a civil action to collect a loan after default	Same

New prohibitions on short-term lenders

(R.C. 1321.41)

Under prior law, a check-cashing lender was prohibited from making a loan to a borrower if there existed an outstanding loan between that check-cashing business and the borrower (R.C. 1315.41(E)). The act prohibits a short-term loan licensee from making a loan to a borrower under any of the following circumstances:

(1) If there exists a loan between the licensee and that borrower;

(2) If a loan between any licensee and that borrower was terminated on the same business day;

(3) If the borrower has more than one outstanding loan;

(4) 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;

(5) If the loan is for the purpose of retiring an existing short-term loan between any short-term lender business and that borrower;

(6) If the borrower 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; or

(7) If the borrower has received a total of four or more loans from licensees in the calendar year.

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

--Bringing or threatening 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 act does 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.

--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 or terms that would be prohibited by the act'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 prescribed by the act (see "***Debt collection practices for short-term lenders***," below);

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

--Drafting funds electronically from any depository financial institution in Ohio, or billing any credit card issued by such an institution. The act 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;

--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.

The act prohibits a short-term loan licensee from violating the act's licensing requirements, from making loans that do not comply with the act's loan terms and conditions requirements, from collecting unauthorized fees and charges, and from collecting treble damages in connection with a civil action to collect a loan after default.

A person who violates any of these provisions is guilty of a first degree misdemeanor (R.C. 1321.99).

Statewide database of loans

(R.C. 1321.46 and 1321.461)

If more than 400 persons are licensed under the Short-Term Lender Law at any point after September 1, 2009, the Superintendent of Financial Institutions must develop and implement a statewide common database, accessible at all times to short-term lenders through an Internet connection. Licensees are to submit the required borrower and loan data in a format the Superintendent prescribes by rule, and must use the database to determine if a borrower is eligible for a loan.

The act stipulates that information in the database, submitted for inclusion in the database, or archived by the Superintendent, is not a public record. Also, a short-term lender is permitted to rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

Database administration. The common database required by the act may be operated by the Superintendent or by a third party selected by the Superintendent pursuant to standard procurement rules (R.C. Chapter 125.). The Superintendent is required to adopt rules to ensure that the database is used by licensees in the manner provided by law. The rules must include all of the following requirements:

--Data must be retained in the database only as required to ensure licensee compliance

with the act's provisions;

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

--Deleted data may be archived, should the Superintendent determine that archiving is necessary for the enforcement of this portion of the act;

--The database cannot rank the credit worthiness of a borrower, and it is only to be used to determine a borrower's eligibility or ineligibility for a loan based on the provisions of the act;

--Data collected for the database is to be used only as prescribed in the act and for no other purpose;

--The social security number of any borrower cannot be included in the database.

Database operator responsibilities. The database operator is required to 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 act authorizes the database operator, if approved by the Superintendent by rule, to impose a per transaction fee for the actual costs of entering, accessing, and maintaining data in the database. The fee is to be payable to the database operator in a manner prescribed by the Superintendent. A licensee may not charge a customer any part of the fee.

If database not developed. If a statewide database is not required to be developed due to the low number of persons licensed under the Short-Term Lender Law, each licensee must subscribe to, report to, and use an electronic database tracking service that permits the licensee to determine whether the borrower has an outstanding unpaid check or debt authorization that is, or reasonably appears to be, connected to a short-term loan. In the absence of such a service, licensees must require borrowers to sign a written declaration confirming that they are eligible to receive a loan.

Licensee records and any electronic database tracking service are subject to review and examination by the Division of Financial Institutions to determine compliance with the act.

Debt collection practices for short-term lenders

(R.C. 1321.45)

The act 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.[6] For these purposes, "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. "Borrower" means a person who has an outstanding or delinquent short-term loan, and includes the borrower's spouse, parent (if the borrower is a minor), guardian, executor, or administrator.

When communicating with any person other than the borrower for the purpose of acquiring location information (that is, residence, telephone number, or place of employment) 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; or

(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.

Under the act, 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; or

(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.

The act 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.

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 act 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; or

(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 is complete upon receipt.

The act 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 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; or

(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.

A debt collector also may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including 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 will 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; or

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

A debt collector also is prohibited by the act from using unfair or unconscionable means to collect or attempt to collect any debt, including 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 concealing the true purpose of the communication, which charges include 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; or

(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.

In addition to the requirements 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, 1692c, 1692d, 1692e, and 1692f, as those sections of federal law exist on the effective date of the act. The act stipulates, however, that in the event of a conflict between described practices in the federal act and described practices in this act, this act's provisions will prevail.

Superintendent's reporting requirements

(R.C. 1321.48)

The act requires the Superintendent of Financial Institutions 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; and

(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 act, is deemed confidential. The following information is to be considered confidential:

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

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

Information regarding enforcement actions is to 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 pursuant to the discretionary authority granted to the Superintendent to disclose such information 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.

The act states that it does not prevent the Division of Financial Institutions from releasing information relating to licensees to the Attorney General for purposes of that office's administration of the Consumer Sales Practices Act (CSPA) (R.C. Chapter 1345.). Information so released remains privileged and confidential, and the Attorney General is prohibited from disclosing it except by introduction into evidence in connection with an action under that Act or as authorized by the Superintendent.

Duties and standards of care for short-term lenders

(R.C. 1321.47)

The act establishes the following duties and standards of care for licensees:

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

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

(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 act prohibits a licensee from waiving or modifying these duties and 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 borrower may 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.

Record-keeping and reporting requirements

(R.C. 1321.422)

Licensees are required to keep and use their books, accounts, records, and loan documents in a manner that will enable the Division of Financial Institutions to determine whether the licensee is complying with the act and with the orders and rules made by the Division under the act. Specifically, the books, accounts, records, and loan documents must be kept separate from those pertaining to transactions that are not subject to the Short-Term Lender Law. The books, accounts, records, and loan documents pertaining to short-term loans are to be preserved for at least two years after making the final entry on, or final revision of any loan document relative to, any loan recorded therein. Accounting systems maintained in whole or in part by mechanical or electronic data processing methods that provide information equivalent to that otherwise required are acceptable for this purpose.

Also, each licensee is required to file with the Division an annual report, under oath or affirmation, concerning its business and operation for the preceding calendar year. If a licensee has more than one place of business in this state, the licensee must furnish a report for each location. The Division must publish annually an analysis of the information provided by those reports, but the individual reports are not public records and are not open to public inspection.

Examination of records

(R.C. 1321.421)

Under prior law, the Superintendent of Financial Institutions was permitted to examine the records of check-cashing lenders whenever the Superintendent considered it necessary

(R.C. 1315.42(C)). The same applies with respect to short-term lenders under the act, except that the Superintendent is required to conduct such examinations *at least annually*.

Enforcement of Short-Term Lender Law

(R.C. 1321.42, 1321.43, 1321.44, and 1345.01)

As was the case under the Check-Cashing Lender Law, a violation of the act's prohibitions on short-term lenders (see "***New prohibitions on short-term lenders***," above) is deemed an unfair or deceptive act or practice in violation of the CSPA. A borrower injured by such a 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 enforce these prohibitions against short-term lenders. The act goes one step further by revising the definition of "consumer transaction" in the CSPA to include transactions involving a loan made pursuant to the Short-Term Lender Law.[7] Consequently, licensees are subject to all of the applicable prohibitions under the CSPA.

Also under the repealed Check-Cashing Lender Law, the Superintendent of Financial Institutions could make any investigation and conduct any hearings to determine if a licensee had violated the Law (R.C. 1315.42, repealed by the act). The act provides the same authority to the Superintendent with respect to the Short-Term Lender Law. But it also permits the Superintendent to impose a monetary fine of not more than $1,000 for each violation. In addition, the Superintendent may adopt rules and issue specific orders to enforce and carryout the purposes of the Short-Term Lender Law.

The act authorizes the Superintendent or a borrower to bring directly an action to enjoin 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 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 act 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 act stipulates that these powers of the Attorney General are in addition to any other applicable powers of the Attorney General.

Under the act, 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 for the Attorney General 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 act requires that, when a judgment for a violation of the Short-Term Lender Law becomes final, the clerk of court mail a copy of the judgment, including supporting opinions, to the Superintendent.

Lastly, the act requires the Superintendent--in accordance with the Administrative Procedure Act (R.C. Chapter 119.)--to suspend or revoke the license of a short-term lender if the Superintendent finds the licensee failed to comply with any order issued by the Superintendent pursuant to the act.

Short-term installment loan linked deposit program

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

The act establishes the Short-Term Installment Loan Linked Deposit Program. Under the program, an "eligible lending institution," defined as a financial institution eligible to make loans that is a public depository of state funds under the Uniform Depository Act, may enter into a deposit agreement with the Treasurer of State. Under that agreement, the institution will receive a linked deposit, in the form of certificates of deposit at up to 3% below current market rates with a maturity not to exceed two years, provided the institution agrees to lend the value of the linked deposit in the form of short-term installment loans to persons in Ohio. For the purpose of the program, "short-term installment loan" is defined as an extension of credit that does not exceed $800, the duration of which is not less than 90 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.

The act 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 program. Any delay in payments or default on the part of an individual who received a short-term installment loan from a lending institution does not in any manner affect the deposit agreement between the lending institution and the Treasurer of State.

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 of State a short-term installment loan linked deposit loan 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 is to reflect the market conditions prevailing in the eligible lending institution's lending area and include provisions for certificates of deposit to be placed for a maturity not to exceed two years. The agreement may

be renewed for up to an additional two years 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, 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 act requires the Treasurer of State 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.[8] The report must set forth the short-term installment loan linked deposits made by the Treasurer of State 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 made pursuant to the program that were paid late or are in default.

High-cost, short-term loans by credit unions

(R.C. 1733.25)

The act eliminates the authority of credit unions to enter into loan agreements with members under the following terms:

(1) The loan is for any amount up to $1,000.

(2) The term of the loan is 30 days or less.

(3) The credit union may charge a fee in addition to interest, which fee is not to be included in the computation of interest for purposes of any provision of the Revised Code that regulates or limits interest charged in connection with a transaction.

(4) The total interest, fees, and other costs of the loan does not exceed 10% of the principal amount.

(5) A member cannot have more than one of these short-term loans outstanding at any one time with the credit union.

(6) The loan cannot be made for purposes of retiring an existing loan between the credit union and that member, if the existing loan is also one of these short-term loans.

Multiple loans under the Small Loan Law

(R.C. 1321.15)

The Small Loan Law (R.C. 1321.01 to 1321.19) predominantly retained by this act generally requires any person engaged in the business of lending money or credit in amounts of $5,000 or less to first obtain a license from the Division of Financial Institutions. The Law governs the terms and conditions of loans made by such licensees, including the maximum interest rate and other permissible charges.

Under continuing law, licensees are prohibited from knowingly inducing or permitting any person, jointly or severally, to be obligated, directly or contingently or both, under more than one loan contract at the same time "for the purpose or with the result of" obtaining a higher rate of interest than would otherwise be permitted on a single loan made under the Small Loan Law. The act also prohibits the making of more than one loan at the same time for the purpose or with the result of obtaining *greater charges* than would otherwise be allowed on a single loan.

Consumer Finance Education Board

(R.C. 1349.71 and 1349.72)

Am. Sub. S.B. 185 of the 126th General Assembly created the 12-member Consumer Finance Education Board and charged the Board with carrying out certain functions related to financial literacy education. Appointments to the Board were to be made jointly by the Speaker of the House, the President of the Senate, and the Governor, but appointments have never been made and the Board has never convened. The act 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 act additionally requires the Board to (1) analyze and investigate the policies and practices of state agencies, nonprofit entities, and businesses regarding counseling and education for small loan borrowers and (2) coordinate and provide resources and assistance to those entities for that counseling and education.

Financial Literacy Education Fund

(R.C. 121.085 and 1321.21; Section 5)

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. Money in the Fund is used to defray the costs of regulating those entities.

The act establishes, within the state treasury, the Financial Literacy Education Fund and requires the Director of Budget and Management, in accordance with a schedule the Director establishes by rule, but at least once every three months, to transfer 5% of all charges, penalties, and forfeitures credited to the Consumer Finance Fund to the new Financial Literacy Education Fund. The act 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 is required to administer the Fund and adopt rules for the distribution of Fund moneys. The act also

requires the Director of Budget and Management, within 30 days of its effective date, to make a one-time transfer of 5% of the balance of the Consumer Finance Fund to the Financial Literacy Education Fund.

The act specifies that at least one-half of the financial literacy 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 of Commerce is required to deliver to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leader of each house an annual report that includes an outline of each adult financial literacy education program developed or implemented, the number of individuals who were educated by each program, and an accounting for all funds distributed.

HISTORY

ACTION	DATE
Introduced	04-29-08
Reported, H. Financial Institutions, Real Estate, & Securities	04-30-08
Passed House (69-26)	04-30-08
Reported, S. Finance & Financial Institutions	05-14-08
Passed Senate (29-4)	05-14-08
House concurred in Senate amendments (70-24)	05-20-08

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[1] All licenses previously issued under the Check-Cashing Lender Law remain in effect until their time of renewal. At that point, the license will be recognized as a valid license under the Short-Term Lender Law. If any person licensed under the Check-Cashing Lender Law on the act's effective date applies for a license to operate under the ongoing Small Loan Law (R.C. 1321.01 to 1321.19) for the 2008 licensing period ending June 30, 2009, that person is to pay only one-half of the licensee fee otherwise required. (Section 4.)

[2] The Consumer Finance Fund is created in R.C. 1321.21.

[3] The act requires the Superintendent of Financial Institutions to issue a role defining "senior officer" (R.C. 1321.43).

[4] The person originating the loan for the licensee is required to identify this contract provision verbally to the borrower and the borrower is to verify that by initialing the contract adjacent to the provision (R.C. 1321.39(D)).

[5] For purposes of the act, "**interest**" means 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 the loan (R.C. 1321.35(C)).

Additionally, "**annual percentage rate**" has the same meaning as in the federal Truth in Lending Act, 15 U.S.C. 1606. All fees and charges are to be included in the computation of the APR. Fees and charges for single premium credit insurance and other ancillary products sold in connection with the transaction are to be included in the calculation of the APR. (R.C. 1321.35(D).)

[6] The act permits the Superintendent of Financial Institutions to adopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that violate the debt collection provisions of the act (R.C. 1321.43).

[7] The CSPA prohibits "unfair or deceptive acts or practices" by suppliers in connection with consumer transactions. Therefore, for an entity to be subject to the CSPA, the transaction itself must fall within the definition of "consumer transaction." Under the CSPA, "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).

[8] The Speaker and President must transmit to the chairpersons of the standing committees of the respective houses that customarily consider legislation regarding financial institutions (R.C. 135.70(D)(3)).