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Bill Analysis
Legislative Service Commission

S.B. 45

125th General Assembly
(As Introduced)

Sens. Blessing, Herington

BILL SUMMARY

- Requires a bank to include certain fees and charges that are charged under a consumer revolving credit agreement in the computation of the maximum annual percentage rate allowed by statute, requires arbitration proceedings held pursuant to such an agreement to be held in the county of the borrower's residence, and requires such agreements to be governed by Ohio and federal law.
- Requires that agreements for a consumer credit card issued by a savings and loan association or a savings bank provide that the association or savings bank may contract for and receive interest or finance charges at rates agreed upon or consented to by the parties to the agreement, but not exceeding an annual percentage rate of 25%, and that an association or savings bank may charge, collect, and receive, as interest, other fees and charges that must be included in the computation of the maximum annual percentage rate allowed by statute; requires arbitration proceedings held pursuant to such an agreement to be held in the county of the borrower's residence; and requires such agreements to be governed by Ohio and federal law.
- Permits a retail seller or holder to contract for and receive finance charges at any rate agreed upon or consented to by the parties to a consumer revolving budget agreement, not exceeding the maximum annual percentage rate allowed by statute; requires that any charges contracted for and received by a retail seller or holder be included in the computation of the maximum annual percentage rate for the purposes of applying the 25% statutory limitation.
- Requires that any charges contracted for and received by a retail seller or holder under a consumer revolving budget agreement be included in the

- computation of the maximum annual percentage rate for purposes of determining whether the maximum annual percentage rate or maximum finance charge has been exceeded; requires arbitration proceedings held pursuant to such an agreement to be held in the county of the retail buyer's residence; and requires such agreements to be governed by Ohio and federal law.
- Requires that an agreement for a consumer credit card issued by a credit union provide that a credit union may contract for and receive interest or finance charges at any rate agreed upon or consented to by the parties to the agreement, not exceeding the statutory annual percentage rate; that the agreement provide that a credit union may charge, collect, and receive, as interest, other fees and charges agreed upon by the credit union and the borrower that must be included in the computation of the maximum annual percentage rate allowed by statute for the purpose of applying the limitation; requires that arbitration proceedings held pursuant to such an agreement be held in the county of the borrower's residence; and requires such agreements to be governed by Ohio and federal law.
 - Increases the amount of a person's interest in certain specified types of property that the person may hold exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order.

CONTENT AND OPERATION

Consumer revolving credit agreement

Computation of interest rates and finance charges

Current law. Under current law, a bank may contract for and receive interest or finance charges at any rate or rates agreed upon or consented to by the parties to the loan contract, extension of credit, or revolving credit agreement, but not exceeding an annual percentage rate of 25%. In addition, a bank may charge, collect, and receive, as interest, other fees, and charges that are agreed upon by the bank and the borrower, including, but not limited to, periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, charges for the return of a dishonored check or other payment instrument, guarantee fees, origination fees, processing fees, application fees, and prepayment fees. Any such fees and charges charged, collected, or received by a bank are not included in the computation of the annual percentage rate or the rates of interest or finance charges for purposes of applying the 25% limitation. Any

agreement between a bank and a borrower, wherever the borrower's place of residence, must be governed solely by the laws of this state and federal law, unless otherwise provided for in the agreement. (R.C. 1109.20(A) and (C).)

Operation of the bill. Under the bill, both of the following apply to a consumer revolving credit agreement between a bank and a borrower (R.C. 1109.20(F)(1)):

(1) The other fees and charges described above under "**Current law**" that are charged under a consumer revolving credit agreement must be included in the computation of the annual percentage rate or the rates of interest or finance charges for purposes of applying the 25% limitation described above.

(2) Any agreement between a bank and a borrower, wherever the borrower's place of residence, must be governed solely by the laws of this state and federal law. This provision apparently eliminates the ability of the parties to the agreement to agree to have the agreement governed by other law. (R.C. 1109.20(F)(1)(a) and (c).)

Arbitration agreement

The bill provides that no arbitration agreement included in a consumer revolving credit agreement is enforceable, unless the arbitration agreement provides that the arbitration proceedings will be held in the county of the borrower's residence (R.C. 1109.18(D)(1)).

Definition

For purposes of the above provisions, "consumer revolving credit agreement" means a revolving credit agreement that is described in R.C. 1109.18(A) and that is primarily entered into for the purchase of personal, family, or household products or services (R.C. 1109.18(D)(2) and 1109.20(F)(2)). Under R.C. 1109.18(A), a bank may extend credit pursuant to a revolving credit agreement allowing a customer to assess credit from time to time subject to a balance limit and without regard to whether the customer has previously assessed and repaid the credit.

Consumer credit cards

Current law provides that a building and loan association or a savings bank may issue credit cards, extend credit in connection with credit cards, and otherwise engage in or participate in credit card operations (R.C. 1151.299 and 1161.44). Under the bill, all of the following apply to an agreement for a consumer credit card issued by a savings and loan association (the bill changes the reference to

building and loan association to savings and loan association) or a savings bank (R.C. 1151.299(B) and 1161.44(B)):

(1) The agreement must provide that a savings and loan association or a savings bank may contract for and receive interest or finance charges at any rate or rates agreed upon or consented to by the parties to the agreement, but not exceeding an annual percentage rate of 25%. In addition, the agreement must provide that an association or savings bank may charge, collect, and receive, as interest, other fees and charges that are agreed upon by the association or the savings bank and the borrower, including, but not limited to, periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, and charges for return of a dishonored check or other payment instrument.

(2) The agreement must provide that any fees or charges described in paragraph (1), above, must be included in the computation of the annual percentage rate or the rates of interest or finance charges for purposes of applying the 25% limitation described above.

(3) No arbitration agreement included in a consumer credit card agreement is enforceable, unless the arbitration agreement provides that the arbitration proceedings will be held in the county of the borrower's residence.

(4) An agreement between a savings and loan association or a savings bank and a borrower, wherever the borrower's place of residence, must be governed solely by the laws of this state and federal law.

As used in the above provisions, "an agreement for a consumer credit card" means a credit card agreement between a borrower and either a savings and loan association or a savings bank that is primarily entered into for the purchase of personal, family, or household goods or services in either of the following ways (R.C. 1151.299(C) and 1164.44(C)):

(a) Purchasing goods or services from a seller by means of a savings and loan association's or a savings bank's commitment to advance to the seller the payment for the goods or services purchased by the borrower;

(b) Obtaining an advance of funds by the savings and loan association or the savings bank or another in reliance on the associations' or savings banks' commitment to pay the funds advanced to the borrower.

Consumer revolving budget agreement

Finance charges and rates of interest

Current law. Under current law, as an alternative to the finance charges permitted by R.C. 1317.06(A) or the interested permitted by R.C. 1317.06(B) and to the finance charges permitted for delinquent charges, a retail seller or holder may contract for and receive finance charges or interest at any rate or rates agreed upon or consented to by the parties to the retail installment contract or revolving budget agreement, but not exceeding an annual percentage rate of 25% (R.C. 1317.061).

Operation of the bill. Under the bill, both of the following apply to a consumer revolving budget agreement (R.C. 1317.061(B)):

(1) A retail seller or holder may contract for and receive finance charges at any rate agreed upon or consented to by the parties to the agreement, but not exceeding an annual percentage rate of 25%.

(2) Any charges contracted for and received by a retail seller or holder as permitted by R.C. 1317.062 (see below) or 1317.11 must be included in the computation of the annual percentage rate for purposes of applying the 25% limitation.

The bill also provides that under a consumer revolving budget agreement, any charges contracted for and received by a retail seller or holder must be included in the computation of the finance charge for purposes of applying the finance charge limitation described in "**Delinquent charges**" below (R.C. 1317.11(C)(7)).

Delinquent charges

Current law. Current law (R.C. 1317.062) provides that as an alternative to the delinquent charges permitted by law in R.C. 1317.06(B) and 1317.11(B), a retail seller or holder may contract for and receive delinquent charges in any amount agreed upon or consented to by the parties to the retail installment contract or revolving budget agreement. Any charges that are contracted for and received under R.C. 1317.062 by a retail seller or holder are not included in the computation of the annual percentage rate or rates of interest or finance charges for purposes of determining whether the maximum annual percentage rate or maximum rate or rates of interest or finance charges authorized have been exceeded. (R.C. 1317.062.)

Operation of the bill. The bill provides that under a *consumer revolving budget agreement*, any charges contracted for and received under R.C. 1317.062,

as described above under "*Current law*," by a retail seller or holder must be included in the computation of the annual percentage rate for purposes of determining whether the maximum annual percentage rate or maximum finance charge authorized has been exceeded (R.C. 1317.062(C)(2)).

Arbitration agreement

The bill provides that no arbitration agreement included in a consumer revolving budget agreement is enforceable, unless the arbitration agreement provides that the arbitration proceedings will be held in the county of the retail buyer's residence (R.C. 1317.11(C)(4)).

Choice of law

Under the bill, any consumer revolving budget agreement between a retail seller or holder and a retail buyer, wherever the buyer's place of residence, must be governed solely by the laws of this state and federal law (R.C. 1317.11(C)(5)).

Definitions

As used in the above provisions:

(1) "Consumer revolving budget agreement" means a revolving budget agreement between a retail buyer and a retail seller, that is primarily entered into by a retail buyer for the purchase of personal, family, or household goods or services from the retail seller (R.C. 1317.061(C)(1), 1317.062(C)(3), and 1317.11(D)).

(2) "Holder," as applied to a consumer revolving budget agreement, means a retail seller's successor in interest (R.C. 1317.061(C)(2)).

Credit unions--consumer credit cards

Current law

Under current law, a credit union may make loans to members for provident and productive purposes as authorized by law, the articles, and regulations, and subject to policies adopted by the credit committee and approved by the board of directors. The interest on any loan made by a credit union may not exceed one and one-half per cent per month on unpaid balances. That interest may accrue and be chargeable on a monthly basis and may be computed upon the unpaid balance of the loan as of the end of the previous calendar month. That interest may be accrued and charged by a technique approved by the Superintendent of Credit Unions so long as the effective interest rate on any loan

does not exceed the amount permitted to be charged by the computation discussed in the prior sentence. (R.C. 1733.25.)

Current law also provides that as an alternative to the interest permitted by law as discussed in the prior paragraph, a credit union may contract for and receive interest at any rate or rates agreed upon or consented to by the parties to the loan contract, but not exceeding an annual percentage rate of 25% (R.C. 1733.251).

Operation of the bill

Under the bill, all of the following apply to an agreement for a consumer credit card issued by a credit union (R.C. 1733.25(F)):

(1) The agreement must provide that a credit union may contract for and receive interest or finance charges at any rate agreed upon or consented to by the parties to the agreement, but not exceeding an annual percentage rate of 18%. In addition, the agreement must provide that a credit union may charge, collect, and receive, as interest, other fees and charges that are agreed upon by the credit union and the borrower, including, but not limited to, periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, and charges for return of a dishonored check or other payment instrument.

(2) The agreement must provide that any fees or charges described in (1) above must be included in the computation of the annual percentage rate or rates of interest or finance charges for purposes of applying the 18% limitation described above.

(3) No arbitration agreement included in a consumer credit card agreement is enforceable, unless the arbitration agreement provides that the arbitration proceedings will be held in the county of the borrower's residence.

(4) Any agreement between a credit union and a borrower, wherever the borrower's place of residence, must be governed solely by the laws of this state and federal law.

For purposes of the above provision, "an agreement for a consumer credit card" means a loan made under a credit card agreement between a borrower and a credit union that is primarily entered into for the purchase of personal, family, or household goods or services in either of the following ways (R.C. 1733.25(F)(2)):

(a) Purchasing goods or services from a seller by means of a credit union's commitment to advance to the seller the payment for the goods or services purchased by the borrower;

(b) Obtaining an advance of funds by the credit union or another in reliance on the credit union's commitment to pay the funds advanced to the borrower of the credit union.

Alternative to interest permitted for credit unions

Current law

Under current law, as an alternative to the interest permitted for a credit union with regards to any loan made by a credit union or the interest described in "**Credit unions--consumer credit cards**" described above, a credit union may contract for and receive interest at any rate or rates agreed upon or consented to by the parties to the loan contract, but not exceeding an annual percentage rate of 25% (R.C. 1733.251).

Operation of the bill

Under the bill, an agreement for a consumer credit card issued by a credit union must provide that a credit union may contract for and receive interest or finance charges at any rate agreed upon or consented to by the parties to the agreement, but not exceeding an annual percentage rate of 25%. In addition, the agreement must provide that a credit union may charge, collect, and receive, as interest, other fees and charges that are agreed upon by the credit union and the borrower, including, but not limited to, periodic membership fees, cash advance fees, charges for exceeding a designated credit limit, charges for late payments, and charges for return of a dishonored check or other payment instrument. The agreement must also provide that any fees or charges described above must be included in the computation of the annual percentage rate or rates of interest or finance charges for purposes of applying the 25% limitation. (R.C. 1733.251(B).)

Exemption from execution, garnishment, attachment, or sale to satisfy a judgment or order

Current law states that every person who is domiciled in this state may hold certain property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order. The bill modifies the amount of certain property that can be held exempt from such action. (R.C. 2329.66.)

In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, every person who is domiciled in Ohio may hold exempt from a judgment lien the person's interest in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence, not to

exceed \$5,000. The bill increases the exempt amount to \$50,000. (R.C. 2329.66(A)(1)(a).)

In the case of a judgment or order except a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, current law exempts the person's interest, not to exceed \$5,000, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. The bill increases the exempt amount to \$50,000. (R.C. 2329.66(A)(1)(b).)

Current law also provides that a person's interest, not to exceed \$1,000, in one motor vehicle, is exempt. The bill increases that amount to \$7,500. (R.C. 2329.66(A)(2).)

Current law exempts a person's interest, not to exceed \$200 in any particular item, in wearing apparel, beds, and bedding, and the person's interest, not to exceed \$300 in each item, in one cooking unit and one refrigerator or other food preservation unit. The bill increases those amounts to \$1,000 and \$1,500, respectively. (R.C. 2329.66(A)(3).)

Current law also provides that a person's interest, not to exceed \$400, in cash on hand, money due and payable, money to become due within 90 days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person, is exempt. The bill includes an interest in money on deposit in a savings bank and increases the amount to \$5,000. (R.C. 2329.66(A)(4)(a).)

A person's interest, not to exceed \$200 in any particular item, in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment, that are held primarily for the personal, family, or household use of the person, are exempt. The bill increases the amount to \$2,000. (R.C. 2329.66(A)(4)(b).) Existing law exempts a person's interest in one or more items of jewelry, not to exceed \$400 in one item of jewelry and not to exceed \$200 in every other item of jewelry. The bill modifies the exemption to include all items of jewelry and increases the exempt amount to \$2,500 for all items of jewelry. (R.C. 2329.66(A)(4)(c).)

The bill also removes a provision that stated both of the following:

(1) If a person does not claim an exemption for one parcel or item of real or personal property used as a residence under R.C. 2329.66(A)(1), the total exemption claimed for the person's interest in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment, that are held primarily for the personal, family, or

household use of the person (R.C. 2329.66(A)(4)(a)) must be added to the total exemption claimed for the person's interest in one or more items of jewelry (R.C. 2329.66(A)(4)(b)), and the total exemption for all such items cannot exceed \$2,000.

(2) If a person claims an exemption for one parcel or item of real or personal property used as a residence under R.C. 2329.66(A)(1), the total exemption claimed for the person's interest in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment that are held primarily for the personal, family, or household use of the person (R.C. 2329.66(A)(4)(a)) must be added to the total exemption claimed for one or more items of jewelry (R.C. 2329.66(A)(4)(b)), and the total exemption cannot exceed \$1,500. (R.C. 2329.66(A)(4)(d).)

Under existing law, a person's interest, not to exceed an aggregate of \$750, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture, is exempt. The bill increases that amount to \$5,000. (R.C. 2329.66(A)(5).)

Existing law also exempts a person's interest, not to exceed \$400, in any property, but this interest only applies in bankruptcy proceedings. The bill increases that amount to \$2,500. (R.C. 2329.66(A)(18).)

HISTORY

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Introduced	03-06-03	p. 169

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