



**H.B. 333**

127th General Assembly

(As Introduced)

**Reps. Batchelder and R. Hagan, Foley, Collier, Ujvagi, J. McGregor, Wolpert, Brinkman, Fende, Stebelton, Harwood, Bolon, Otterman, Webster, Healy, Mallory, D. Stewart, Gerberry, Yuko, Letson, Koziura, Celeste, Sykes, Sayre, B. Williams, Goyal, Barrett, Budish, Dyer, Boyd**

---

**BILL SUMMARY**

- Makes it specific that persons, who utilize the mail, telephone, Internet, or electronic means to lend funds as part of a check-cashing business, must obtain a check-cashing lender license.
- Prohibits a check-cashing lender from making a loan to a borrower who has an outstanding loan with any check-cashing licensee.
- Changes the interest rate permissible on check-cashing loans from 5% per month to 36% per year.
- Prohibits loan origination fees, and limits check-collection charges, on check-cashing loans.
- Establishes several new prohibitions on check cashing lenders.
- Requires the Superintendent of Financial Institutions to create a statewide database of loans by check-cashing licensees.
- Requires check-cashing lenders to include in the written loan contract any disclosures required by the federal "Truth in Lending Act."
- Creates a small loan link deposit program.
- Expands the responsibilities of the Consumer Finance Education Board.
- Eliminates a certain credit union lending option.

---

## CONTENT AND OPERATION

### *Check-Cashing Lender Law*

In order to originate loans in Ohio, a "check-cashing lender" must be licensed by the Superintendent of Financial Institutions (R.C. 1315.36). There is a two-tier system of licensing for check-cashing businesses in Ohio. A business licensed under R.C. 1315.23 only may cash checks and pay their customers the full amount of the check less any charges permitted by law. A check-cashing business, however, that wants also to make loans must obtain a second license under R.C. sections 1315.35 to 1315.44. Current Ohio law requires that these loans be made pursuant to a written loan contract, be not for more than \$800, and not have a duration of more than six months. Current law permits licensees to charge a loan origination fee and interest at a rate not to exceed 5% per month or fraction of a month on the unpaid principal of the loan. Licensees also may charge check-collection fees.

### *Mail and Internet lenders*

(R.C. 1315.36)

Current law includes a general provision that requires a check-cashing business (defined as any person who engages in the business of cashing checks for a fee) to obtain a license to make loans under R.C. sections 1315.35 to 1315.44 of the Revised Code (Check-Cashing Lender Law). The bill specifies that the licensing requirement applies to any person who lends funds to a borrower in Ohio as part of a check-cashing business, or in whole or in part, makes, offers, brokers, or assists a borrower in Ohio to obtain such a loan through any method including, but not limited to mail, telephone, Internet, or electronic means.

### *New prohibitions on check-cashing lenders*

(R.C. 1315.41)

Under current law, a check-cashing lender is prohibited from making a loan to a borrower if there exists an outstanding loan between that check-cashing business and that borrower (R.C. 1315.41). The bill prohibits a check-cashing lender from making a loan to a borrower that has an outstanding loan with any other check-cashing business licensed in Ohio, or has such a loan that was terminated on the same day.

The bill also prohibits a licensee from making a loan to a borrower that would cause the borrower to be indebted to one or more check-cashing businesses in excess of 90 days during the previous 12 months considering all loans obtained

by that borrower in aggregate, including the proposed new loan, and specifically prohibits making a loan for the purposes of retiring an existing loan between any check-cashing business and that borrower.

The bill also prohibits a check-cashing lender from engaging in any of the following practices:

- Require the borrower to waive the borrower's right to legal recourse under any otherwise applicable provision of state or federal law;
- Accept a check or other method of access to a deposit account maintained by the borrower, or the title of a vehicle as security for the obligation;
- Engage in any device or subterfuge to evade the requirements of R.C. sections 1315.35 to 1315.44 including assisting a borrower to obtain a loan at a rate of interest that would be prohibited by R.C. sections 1315.35 to 1315.44, 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.

A person who violates any of these provisions is guilty of a misdemeanor of the first degree (R.C. 1315.99, not in the bill).

### **Statewide database of loans**

(R.C. 1315.45)

Within 120 days of the bill's effective date, the bill requires that the Superintendent of Financial Institutions develop, implement and maintain a statewide common database, accessible at all times to check-cashing businesses through an Internet connection. Licensees must submit the required borrower and loan data in a format as the Superintendent prescribes by rule, and must use the database to determine if a borrower has an open loan with any check-cashing business or if the borrower has been indebted to one or more check-cashing businesses for a total of 90 days or more during the previous 12 months, considering all loans made to that borrower in aggregate. In the period of time from the effective date of the bill until the database is available, a check-cashing business must require a borrower to sign a written declaration confirming that the borrower is eligible to receive a new loan (Section 3).

The bill stipulates that information in the database, submitted for inclusion in the database, or archived by the Superintendent, is not a public record (R.C. 1315.45(E)).

A check-cashing business may rely on the information contained in the database as accurate and is not subject to 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 bill may be operated by the Superintendent or by a third party selected by the Superintendent pursuant to standard procurement rules outlined in R.C. Chapter 125.

The Superintendent must adopt rules to ensure that the database is used by licensees. The rules must include all of the following requirements:

- Data must be retained in the database only as required to ensure licensee compliance with the bill's provisions;
- Information that identifies a borrower is deleted from the database on a regular and routine basis, 12 months after the transaction is closed;
- The archiving of deleted data, should the Superintendent determine that archiving is necessary for the enforcement of this section;
- A prohibition against the database ranking the credit worthiness of a borrower and a limitation allowing the database only to be used to determine a borrower's eligibility or ineligibility for a loan based on the provisions of this chapter;
- Data collected pursuant to the bill's provisions be used only as prescribed in the bill and for no other purpose;
- Allowing a fee per transaction for data required to be submitted.

Under the bill, any information submitted for incorporation into the database, information in the database itself, or archived information as maintained by the Superintendent, is not public record under R.C. 149.43.

The bill also stipulates that a check-cashing business may 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 operator responsibilities**

The database operator must also do all of the following:

- Establish and maintain a process for responding to transaction verification requests due to technical difficulties with the database that prevent the licensee from accessing the database through the Internet;
- Provide accurate and secure receipt, transmission, and storage of borrower data;
- Designate a transaction as closed within one business day of receiving notification from a licensee;
- Take all reasonable measures to ensure the confidentiality of the database and to prevent identity theft.

The bill authorizes the database operator to impose a per transaction fee for the actual costs of entering, accessing, and maintaining data in the database, provided that the fee is approved by the Superintendent. The fee must be payable to the database operator in a manner prescribed by the Superintendent. A licensee may charge a customer all or part of the fee.

### **Interest rate and fees**

(R.C. 1315.39 and 1315.40)

Under current law, a licensee may charge a loan origination fee of \$5 per \$50 of the amount of the loan up to the first \$500 of the loan and \$3.75 per \$50 of the amount of the loan between \$500 and \$800. Also, a licensee may charge a check-collection fee not exceeding \$20 plus any amount passed on from a financial institution for a returned or dishonored check, share draft, or negotiable order of withdrawal. The bill prohibits the charging of a loan origination fee and limits check-collection charges to one charge per loan.

Current law permits licensees to charge interest at a rate not to exceed 5% per month or fraction of a month on the unpaid principal of the loan. The bill requires that the interest be calculated in compliance with the federal "Truth in Lending Act" (15 U.S.C. 1606), and authorizes licensees to charge interest at a rate not to exceed an annual percentage rate of 36%.

### **Truth in lending disclosures**

(R.C. 1315.39)

Under continuing law, a loan made under the Check-Cashing Lender Law must be made pursuant to a written loan contract that sets forth the terms and conditions of the loan, and includes certain required disclosures. The bill

additionally requires that lender provide any disclosures required under the federal "Truth in Lending Act" (TILA).<sup>1</sup> Therefore, any lender who fails to provide the TILA disclosures, in addition to having violated federal law, also will have violated Ohio's Check-Cashing Lender Law, made a misdemeanor of the first degree.

### **Small loan link deposit program**

(R.C. 135.68, 135.69 and 135.70)

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

an extension of credit that does not exceed eight hundred dollars, the duration of which is not less than ninety days and six installments, and the interest on the loan is calculated in compliance with 15 U.S.C. 1606 (the federal "Truth in Lending Act"), and does not exceed an annual percentage rate of thirty-six per cent

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

### **Deposit agreement**

(R.C. 135.69)

In order to receive a small loan linked deposit, an eligible lending institution must forward to the Treasurer a small loan linked deposit package in the form and manner as prescribed by the Treasurer, and must enter into a deposit agreement with the Treasurer of State. The agreement must reflect the market conditions prevailing in the eligible lending institution's lending area, must include

---

<sup>1</sup> 82 Stat. 146 (1974) 15 U.S.C. 1601 *et seq.*

provisions for certificates of deposit to be placed for any maturity considered appropriate by the Treasurer, and may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit.

### **Treasurer approval**

(R.C. 135.70)

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

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

### **Consumer Finance Education Board**

(R.C. 1349.72)

S.B. 185 of the 126th General Assembly created the Consumer Finance Education Board and charged the board with the responsibility to carry out certain functions related to financial literacy education. The bill requires the board to analyze and investigate the policies and practices of state agencies, nonprofit entities, and businesses regarding counseling and education for small loan borrowers, and requires the board to coordinate and provide resources and assistance to those entities for small loan borrower counseling and education.

### **Small Loan Act modifications**

(R.C. 1321.13)

Under current law, no person may make loans of \$5,000 or less without being licensed under sections 1321.01 to 1321.19 of the Revised Code (unofficially known as the Small Loan Act). Various financial institutions and lenders, who are otherwise licensed or authorized to lend money are exempt from the licensing requirement under the Small Loan Act. Certain entities that make

small short term loans may choose to be licensed under the Small Loan Act rather than to be licensed as a check-cashing lender.

Under current law, persons licensed under the Small Loan Act may charge interest at a rate of 28% on the unpaid principal not exceeding \$1,000, and 22% on the unpaid principal above \$1,000. Under the bill, a Small Loan Act licensee may charge interest at a rate of up to 36% per year on the balance of the loan up to \$800. Also, a licensee may not charge a loan origination fee on loans for \$800 or less. Therefore, whether licensed under the Small Loan Act or Check-Cashing Lender Law, a lender would be subject to the same interest rate ceiling and origination fee prohibition on loans for \$800 or less.

**Credit union loan authorization**

(R.C. 1733.25)

Among the other lending activities credit unions are authorized by law to engage in, current law authorizes credit unions to make \$1,000 loans with a term of less than 30 days, according to a specific set of terms as outlined in statute. The bill repeals the specific lending authorization for these loans.

---

**HISTORY**

ACTION	DATE
Introduced	10-02-07
Referred, H. Financial Institutions, Real Estate, & Securities	10-25-07

R-2164-127.doc/jc