Ohio Legislative Service Commission

Bill Analysis

Allison Mease

Am. H.B. 486

128th General Assembly
(As Reported by H. Consumer Affairs & Economic Protection)

Reps. Lundy and Stebelton, Foley, Celeste, Skindell, Dyer, Stewart, Sykes, Harris, Murray, Driehaus, Heard, Belcher, Hagan, Garland, Letson, Yuko

BILL SUMMARY

- Prohibits licensees under the Check-Cashing Business Law (R.C. 1315.26) and their affiliates, licensees under the Small Loan Law (R.C. 1321.01 to 1321.19), and registrants under the Mortgage Loan Law (R.C. 1321.51 to 1321.60) from charging or receiving a fee for cashing a proceeds check or money order that was disbursed to fund a loan made by the licensee or an affiliate of the licensee.

- Prohibits a licensee under the Small Loan Law and a registrant under the Mortgage Loan Law from (1) requiring a borrower to cash a loan proceeds check or money order at their business, at an affiliate, or at any specified third party, and (2) seeking or obtaining compensation from any affiliate or third party that provides check-cashing services to cash a proceeds check or money order disbursed to fund a loan.

- Prohibits a licensee or registrant from requiring a borrower to obtain membership in an organization or pay a membership fee.

- Explicitly applies a provision prohibiting the charging of certain amounts under the Small Loan Law and the Mortgage Loan Law to fees assessed by certain credit service organizations.

- Prohibits a licensee or registrant from charging a person a loan origination charge, and prohibits a registrant from charging a credit investigation fee, more than once per any 90-day period on loans of $1,000 or less that are made pursuant to a license issued under the Small Loan Law or a registration issued under the Mortgage Loan Law.

- Requires a credit services organization to maintain records pertaining to business transactions pursuant to the Small Loan Law and the Mortgage Loan Law for four years.

- Authorizes the Superintendent of Financial Institutions to examine a credit services organization's records pertaining to business transacted under the Small Loan Law and the Mortgage Loan Law.

- Explicitly includes in a continuing prohibition against a credit services organization engaging in deceptive acts in connection with the organization's services knowingly acting in or abetting a scheme to evade restrictions on fees or charges as set forth in R.C. Chapter 1321.

- Increases the fine for certain other violations regarding the Mortgage Loan Law of not less than $100 nor more than $500 to not less than $500 nor more than $1,000.

CONTENT AND OPERATION

Check-cashing fees

The bill prohibits a licensee under the Check-Cashing Business Law from charging a fee for cashing a proceeds check or money order disbursed to fund a loan made by the licensee or an affiliate of the licensee. The bill also prohibits a licensee under the Small Loan Law and a registrant under the Mortgage Loan Law from charging or receiving a fee for cashing a proceeds check or money order that was disbursed to fund a loan made by the licensee or registrant, as applicable. The bill also prohibits a licensee under the Small Loan Law and a registrant under the Mortgage Loan Law from (1) requiring a borrower to cash such a check or money order at their business, at an affiliate, or at any specified third party, and (2) seeking or obtaining compensation from any affiliate or third party that provides check-cashing services to cash a proceeds check or money order disbursed to fund a loan. (R.C. 1315.26(C), 1321.13(I), 1321.15(D), 1321.57(J)(1), and 1321.59(Q).)

Membership fees

The bill prohibits licensees under the Small Loan Law and registrants under the Mortgage Loan Law from requiring a borrower to obtain membership in an organization or pay a membership fee (R.C. 1321.15(E) and 1321.59(R)).

Credit services organization fees

Under current law, licensees under the Small Loan Law may make loans in amounts of up to $5,000 (R.C. 1321.02) and charge interest at a 28% annual percentage

rate (APR) for loans of $1,000 or less and 22% APR for any part of a loan over $1,000. In addition, a licensee, for loans over $1,000 and open-end loans, can agree with a borrower to charge up to 25% APR (R.C. 1321.131). Similarly, registrants under the Mortgage Loan Law, which are not limited in the maximum amount of a loan, may charge interest up to 21% APR (R.C. 1321.57(A)). Interest of up to 25% APR may be imposed if the borrower agrees to it (R.C. 1321.571). In addition, a registrant may require the borrower to provide insurance or a loss payable endorsement, may charge points, and impose a prepayment penalty (R.C. 1321.57(F) and (G)).

Current Small Loan Law specifies that, subject to certain exceptions, in addition to the interest and charges described above, no further or other amount may be charged or required by the licensee.[1] The bill expands this provision to also apply to amounts *received* by the licensee and explicitly applies this provision to fees assessed by a credit services organization that holds or is required to hold a certificate of registration under the Ohio Credit Services Organization Act. (R.C. 1321.13(G).)

Similarly, current Mortgage Loan Law specifies that, subject to certain exceptions, in addition to the interest and charges described above, no further or other amount, whether in the form of broker fees, placement fees, or any other fees whatsoever, may be charged or received by the registrant.[2] The bill expands this provision to also apply to amounts *required* by the registrant and explicitly includes in the reference to broker fees those fees assessed by a credit services organization that holds or is required to hold a certificate of registration under the Ohio Credit Services Organization Act. (R.C. 1321.57(H)(1).)

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[1] Excepted from this provision are the amounts of fees authorized by law to record, file, or release security interests on a loan and fees for credit reports, and costs and disbursements to which the licensee may become entitled by law in connection with any suit to collect a loan or any lawful activity to realize on a security interest after default (R.C. 1321.13(G)).

[2] Excepted from this provision are costs and disbursements in connection with any suit to collect a loan or any lawful activity to realize on a security interest or mortgage after default. In addition, the following additional charges may be included in the principal amount of the loan or collected at any time after the loan is made: (1) the amounts of fees authorized by law to record, file, or release security interests and mortgages on a loan, (2) with respect to a loan secured by an interest in real estate, the following closing costs, if they are bona fide, reasonable in amount, paid to third parties, and not for the purpose of circumvention or evasion of the above prohibition: (a) certain fees or premiums related to the title and inspections, (b) if not paid to the registrant, an employee of the registrant, or a person affiliated with the registrant, fees for preparation of a mortgage, settlement statement, or other documents, fees for notarizing mortgages and other documents, appraisal fees, and fees for any federally mandated inspection of home improvement work financed by a second mortgage loan, and (c) fees for credit investigations not exceeding $10. (R.C. 1321.57(H)(1).)

Loan origination charges and credit investigation fees on loans of $1,000 or less

Under current law, licensees under the Small Loan Law may charge loan origination fees in the following amounts (R.C. 1321.13(I)):

Amount of loan	Maximum origination fee
$500 or less	Greater of $15 or 1% of principal amount
More than $500	Greater of $30 or 1% of principal amount

Registrants under the Mortgage Loan Law may charge origination fees in the following amounts (R.C. 1321.57(J)(1)):

Amount of loan (secured)	Maximum origination fee
$500 or less	$15
More than $500 but less than $1,000	$30
More than $1,000 but less than $2,000	$100
More than $2,000 but less than $5,000	$200
At least $5,000	Greater of $250 or 1% of principal amount

Amount of loan (unsecured)	Maximum origination fee
$500 or less	$15
More than $500 but less than $1,000	$30
More than $1,000 but less than $5,000	$100
At least $5,000	Greater of $250 or 1% of principal amount

Furthermore, a registrant under the Mortgage Loan Law may charge a $10 credit investigation fee (R.C. 1321.57(H)(1)(c)).

The bill prohibits both a licensee or registrant from charging a person a loan origination charge more than once per any 90-day period on any one or more loans with a principal amount of $1,000 or less. The bill additionally prohibits a registrant from

charging a credit investigation fee more than once per any 90-day period on any one or more loans with a principal amount of $1,000 or less. These limitations apply regardless of whether the loan is made under the Small Loan Law or the Mortgage Loan Law. (R.C. 1321.13(I), 1321.15(C), 1321.57(J)(1), and 1321.59(P).)

Evasion of fee restrictions

Current law prohibits a credit services organization, salesperson, agent, or representative of a credit services organization, or independent contractor that sells or attempts to sell the services of a credit services organization from engaging, directly or indirectly, in any fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization. The bill specifically includes in this prohibition knowingly acting in or abetting a scheme to create an evasion of restrictions on fees or charges as set forth in R.C. Chapter 1321. (which includes the Small Loan Law, the Mortgage Loan Law, and the Short Term Loan Law). (R.C. 4712.07(L).)

Retention and examination of records

The bill requires a credit services organization[3] to maintain records pertaining to business transacted pursuant to the Small Loan Law or the Mortgage Loan Law for four years. As often as the Superintendent of Financial Institutions considers it necessary, the Superintendent may examine the credit services organization's records, including all records created or processed by the organization, pertaining to business transacted pursuant to these laws. The bill prohibits a credit services organization from failing to comply with this provision. (R.C. 4712.021.)

Fines

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

- Making a loan that does not comply with the interest and fee limitations set forth in the Small Loan Law, the Mortgage Loan Law, and the Fair Debt Collection Practices Act (R.C. 1321.57, 1321.58, 1321.59, and 1321.591);

- Entering into more than one contract with a borrower at the same time to obtain higher charges than is otherwise permitted, refusing to provide information regarding the amount required to pay a loan in full, or paying

[3] For purposes of this provision, "credit services organization" includes any person whose certificate of registration is cancelled, surrendered, or revoked or who otherwise ceases to engage in business.

or receiving excessive fees for brokering a loan secured by real estate (R.C. 1321.59);

- Making a false, misleading, or deceptive advertisement (R.C. 1321.60).

The bill adds to the above list the violation of making a loan under the Small Loan Law or Mortgage Loan Law in an amount of $1,000 or less, that does not conform to the 28% APR limitation provisions of the bill and the prohibition against membership fees. The bill also adds violation of the prohibitions described in "**Check-cashing fees**," above, applicable to registrants under the Mortgage Loan Law to this fine category. The bill also increases the fine for all these violations to not less than $500 nor more than $1,000. (R.C. 1321.99.)

HISTORY

ACTION	DATE
Introduced	04-12-10
Reported, H. Consumer Affairs & Economic Protection	05-11-10

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