Members Only

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Payday Lending in Ohio

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The term "payday loan" describes a small, unsecured short-term loan the repayment of which is to occur on the borrower's next payday. A borrower typically writes a post-dated personal check to the lender in the full amount of the loan plus fees. On the maturity date, if the borrower does not return to repay the loan, the lender cashes the check. Alternatively, the borrower may authorize the lender to electronically withdraw the loan amount plus fees from the borrower's checking account on the borrower's next payday. This is often the case when a borrower applies for the loan via the Internet.

Payday lending has generated a great deal of controversy over the years, the core issues being the high cost of these loans (in terms of interest rate and fees) and the tendency of borrowers to repeatedly renew the loans. But the payday lending industry has countered that making these loans available provides a valuable service for a number of consumers.

Payday lending expanded in Ohio following 1996 legislation authorizing check-cashing businesses to make small loans. In 2008, the General Assembly enacted, and the state's voters approved, legislation repealing this authority and establishing the Short-Term Loan Law. But no businesses are currently licensed under the new law, as lenders have opted to make payday-type loans under Ohio's Mortgage Loan Law or Small Loan Law. However, a late 2012 decision of an Ohio Court of Appeals, affirming the Elyria Municipal Court, has challenged lenders' authority to make payday-type loans under the Mortgage Loan Law.

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A brief history of payday lending, 1996 to 2008

"Payday loans" were initially offered by check-cashing businesses that obtained a special license from the Division of Financial Institutions.

In Ohio, the expansion of payday lending began in 1996 with the enactment of H.B. 313 of the 121st General Assembly. That act authorized licensed check-cashing businesses to make certain small loans if they obtained a separate "check-cashing loan" license from the Division of Financial Institutions of the Department of Commerce.[1] These loans could not exceed $800 and could not have a duration of more than six months. Licensees were permitted to charge loan origination fees (equal to $5 per $50 up to $500 of the loan amount and $3.75 per $50 of the loan amount between $501 and $800) and interest at a rate of 5% per month or fraction of a month on the unpaid principal of the loan. As to loan frequency, the law prohibited a licensee from making a loan to a borrower only if there was an outstanding loan between the licensee and that borrower.

Under the Check-Cashing Loan Law, the APR of a payday loan, when calculated to represent the total cost of the loan, could be 390% or higher.

Among other things, the loan contract had to include the following statement: "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." Due to the short term nature of such a loan, the annual percentage rate, when calculated to represent the total cost of the loan, could be 390% or higher, depending on the length of the loan. To illustrate, a borrower who took out a loan of $300 for two weeks would end up owing $350. The $50 "charge" consists of a $30 loan origination fee ($5 per $50 of the loan amount) plus interest at 5% per month (60% per year).[2]

By 2008, the Division of Financial Institutions had issued over 1,500 check-cashing loan licenses.[3] Proponents of payday lending argue that these loans are the only way many low-income or fixed-income individuals can obtain financing to cover unexpected expenses, and that alternatives are more costly, as in the case of bank overdraft fees or bad check fees.

Those opposed to payday lending claim, however, that most payday loans are used to cover ordinary living expenses – not emergencies. As a consequence, the high interest rates and fees, combined with the short-term nature of the loans, lead many consumers to become trapped in a cycle of debt, often taking out additional payday loans to pay off previous ones.[4]

The often contentious debate culminated in the passage of H.B. 545 of the 127th General Assembly in 2008. The act repealed the Check-Cashing Loan Law and established the Short-Term Loan Law.[5] A lender that obtained a license under the new law was permitted to make loans not exceeding $500 for a period of not less than 31 days, and to charge a maximum annual percentage rate

(APR) of not more than 28%. H.B. 545 was challenged by a referendum petition and placed before the voters on November 4, 2008. The official ballot language for Issue 5 was as follows:[6]

> Substitute House Bill 545 (H.B. 545), which was passed by the Ohio legislature and signed into law by the Governor, substantially changed the law regulating how certain lenders in Ohio operate. Under the referendum, voters must decide whether Section 3 of H.B. 545 should go into effect. . .
>
> 1. If a majority of Ohio voters approve Section 3 of H.B. 545, all short term lenders, including check cashing lenders, would be subject to the following limitations:
>   - The maximum loan amount would be $500;
>   - Borrowers would have at least 30 days to repay the loan; and
>   - The maximum interest rate would be 28% annual percentage rate (APR) on all loans.
>
> 2. If a majority of Ohio voters reject Section 3 of H.B. 545, check cashing lenders would be allowed to continue under previous law as follows:
>   - The maximum loan amount would continue to be $800;
>   - There would continue to be no minimum repayment period; and
>   - Check cashing lenders could continue to charge rates and fees, resulting in a total charge for a loan that substantially exceeds an equivalent APR of 28%. . .

A majority of the electorate (63.61%) voted to approve the act, and H.B. 545 took effect.[7]

Payday lending after the Issue 5 vote

According to the Division of Financial Institutions, no one is currently licensed under the Short-Term Loan Law. The majority of "payday loans" are made by businesses registered under the Mortgage Loan Law (R.C. 1321.51 to 1321.60). The bulk of the remainder are made by lenders licensed under the Small Loan Law (R.C. 1321.01 to 1321.19).[8]

As described below, the lending authority granted by each body of law differs with respect to loan amount and duration, maximum interest rates, permissible fees and charges, frequency of obtaining loans, as well as other loan conditions. Of particular significance is the manner in which each body of law defines "interest" and "annual percentage rate" and the method by which interest is to be calculated. As a result of these differences, payday loans made under the Mortgage Loan Law and Small Loan Law are more costly for borrowers and, therefore, more financially advantageous for lenders than those made under the Short-Term Loan Law. The following table compares the cost of borrowing $200 for 14 days:[9]

H.B. 545 of the 127th General Assembly, which repealed the Check-Cashing Loan Law and enacted the Short-Term Loan Law, was unsuccessfully challenged by a referendum petition in 2008.

STATUTE	MAXIMUM ANNUAL PERCENTAGE RATE
Short-Term Loan Law	28%
Small Loan Law	226%
Mortgage Loan Law	353%

One borrower has successfully challenged the authority of a registrant under the Mortgage Loan Law to make payday-style loans.

Recent Ohio court challenge

The Ninth District Court of Appeals (Lorain, Medina, Summit, and Wayne counties), in a December 2012 decision affirming the lower court's opinion, has challenged a lender's authority to make payday-type loans under the Mortgage Loan Law. The particular case, which was originally heard by a magistrate of the Elyria Municipal Court,[10] involved a $500, two-week loan made by a lender registered under the Mortgage Loan Law. The borrower was to pay the full amount back by authorizing a $545.16 debit against his checking account. That amount reflected a 235.48% APR (using the broad definition under the federal Truth in Lending Act[11]), based on a $30 loan origination charge, 25% per annum interest over 14 days, and a $10 credit investigation fee. When the borrower failed to repay the loan when due, the lender filed suit.

The magistrate's opinion, which was affirmed by the Municipal Court, examined the history behind the enactment of the various lending or anti-usury laws by the legislature and concluded that a two-week, one-payment loan was not covered by the Mortgage Loan Law but by the 2008 Short-Term Loan Law. The opinion emphasized that the language of the Mortgage Loan Law – which describes all permissible loans as involving payments over time – reflects that law's original intent to regulate large, long-term installment loans like mortgages. He pointed to the success of Issue 5 and the fact that, according to the ballot language, all short-term lenders, including check-cashing lenders, would be subject to the limitations of the new Short-Term Loan Law if the issue were approved.

Consequently, the magistrate found that

> [t]o hold the [Mortgage Loan Law] covers this type of loan would ignore the clear history of legislative regulation of the "payday loan" industry, conflict with the legislative intent behind both the Small Loan Act and the [Mortgage Loan Law], and outright undermine the Short-Term [Loan Law] recently enacted to specifically cover loans like this.

In the Municipal Court's affirmation of the magistrate's opinion, it held that it "[would] not nullify the will of the legislature and voters and read into the second mortgage loan law some previously unnoticed, implied authority for a type of lending historically the subject of special usury legislation." As such, the Court allowed the lender to recover only 8% interest (the general usury rate under R.C. 1343.01), rather than the 25% it claimed, and denied all fees. The decision was appealed.

On December 3, 2012, the Ninth District Court of Appeals affirmed the judgment of the Elyria Municipal Court.[12] As stated by the Court, the issue in the case was whether the loan made to the borrower qualified as a permissible loan under the Mortgage Loan Law. The lender argued that the General Assembly intended to allow lenders to choose between the Short-Term Loan Law and the Mortgage Loan Law. In response, the Court reasoned that, if that assumption were true, no payday lender would ever register under the Short-Term Loan Law, as the Mortgage Loan Law permits the issuance of loans in greater amounts and with shorter durations, and the charging of more fees, than allowed under the Short-Term Loan Law. The result would be "to nullify the very legislation that is designed to regulate payday-type loans – a result at odds with the intent of the General Assembly."

The Court determined that, since the interest on the loan in question would be collected all at once, the loan did not fit the definition of interest-bearing for purposes of the Mortgage Loan Law. Nor did it qualify as a precomputed loan under that law. Consequently, it was not a loan permitted by the Mortgage Loan Law, and the lender was limited to the general usury rate of interest of 8% per annum.

The decision directly affects only payday lending in the jurisdiction of the Ninth District Court of Appeals - Lorain, Medina, Summit, and Wayne counties. It likely will be appealed to the Ohio Supreme Court.[13]

How the various lending laws compare

This portion of the *Members Only* brief highlights, for comparison purposes, the core terms of each type of "payday loan."

Short-Term Loan Law

Though the 2008 Short-Term Loan Law does not appear to be operating in the manner intended by the General Assembly – as former licensees under the Check-Cashing Loan Law opted instead to be registered under the Mortgage Loan Law or licensed under the Small Loan Law – it does reflect the safeguards both the legislature and a majority of the Issue 5 voters believed were warranted.

No one is currently licensed under the Short-Term Loan Law.

LOAN TERMS	SHORT-TERM LOAN LAW (R.C. 1321.35 to 1321.48)
Maximum loan amount *(R.C. 1321.39(A))*	$500
Duration of a loan *(R.C. 1321.39(B))*	Not less than 31 days.
Maximum interest charges *(R.C. 1321.40(A))*	28% APR (see "**Definition of interest**," below).
Other permissible fees or charges *(R.C. 1321.40(B) and (C))*	➢ One check collection charge per loan (not exceeding $20 plus any amount passed on from financial institutions for each check dishonored). ➢ Disbursements to which the licensee is entitled by law in connection with a civil action to collect the loan after default.
Secured or unsecured *(R.C. 1321.41(I))*	Unsecured only.
Restrictions on obtaining loans	Yes (see "**Restrictions on the frequency of obtaining loans**," below).

A borrower cannot receive more than four short-term loans per calendar year.

Definition of interest

The Short-Term Loan Law permits the charging of interest that does not exceed an annual percentage rate of 28%. In this context, "interest" means all charges payable directly or indirectly by a borrower to a licensee as a condition of a loan. The term "annual percentage rate" has the same meaning as in the federal Truth in Lending Act (TILA) and specifically includes all fees and charges in its computation. The Law also specifies that the interest is to be calculated in the manner provided for in TILA.[14]

Restrictions on the frequency of obtaining loans

To address the concern over the tendency of some borrowers to remain in a cycle of debt, licensees are prohibited from making a loan to a borrower under *any* of the following circumstances:

(1) If there exists an outstanding loan between the licensee and the 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 of more than $500 to licensees, or indebt the borrower to licensees for an amount that exceeds 25% of the borrower's gross monthly salary, not including bonus, overtime, or other similar compensation, based on a payroll verification statement presented by the borrower;

(5) If the purpose of the loan is to retire an existing short-term loan between any licensee and that borrower;

(6) If the borrower has received two loans within the previous 90 days from licensees, unless the borrower has completed a financial literacy program during that period approved by the Superintendent of Financial Institutions; or

(7) If the borrower has received a total of four or more loans from licensees in the calendar year.[15]

In order to track the making of short-term loans, the Superintendent must develop and implement a statewide common database if more than 400 persons are licensed under the Short-Term Loan Law at any point. Licensees would then have to submit specified borrower and loan data and use the database to determine if a borrower is eligible for a loan.[16]

If a statewide database is not developed due to a lower number of persons licensed under the 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 tracking service, licensees must require borrowers to sign a written declaration confirming that they are eligible to receive a loan.[17]

Small Loan Law

The Small Loan Law prohibits anyone from engaging in the business of lending money, credit, or choses in action in amounts of $5,000 or less without first obtaining a license from the Division of Financial Institutions.[18] Entities exempt from the Law generally include banks, savings banks, trust companies, savings and loan associations, and credit unions, whether operating under federal or state law.[19]

Small loans may be structured as interest-bearing, precomputed, or open-end.[20]

If more than 400 persons are licensed under the Short-Term Loan Law at any point, licensees would have to submit certain borrower and loan data to a statewide database and use it to determine a borrower's eligibility for a loan.

LOAN TERMS	SMALL LOAN LAW *(R.C. 1321.01 to 1321.19)*
Maximum loan amount *(R.C. 1321.02)*	$5,000
Duration of a loan	No provision.
Maximum interest charges *(R.C. 1321.13(A); 1321.131)*	For loan amounts of $1,000 or less – 28% interest per year, and for loan amounts over $1,000 – 22% interest per year; OR 25% APR (see "**Definition of interest**," below).
Other permissible fees or charges *(R.C. 1321.13; 1321.16)*	➢ Loan origination charges on loans that are not open end: (1) If the principal amount of the loan is $500 or less, the greater of $15 or 1% of the principal amount of the loan, and on each refinancing made more than 6 months after the original loan or any previous refinancing, $15. (2) For all other loans, the greater of $30 or 1% of the principal amount of the loan, and on each refinancing, $30. ➢ Default (late) charges on any installment not paid in full within 10 days after its due date, in an amount not exceeding the greater of 5% of the scheduled installment or $5. For open-end loans, default charges on any required minimum payment not paid in full within 10 days after its due date, not exceeding the greater of 5% of the required minimum payment or $5. ➢ Check collection charges of up to $20 for each check dishonored, plus any charges passed from other financial institutions for each check. ➢ Fees authorized by law to record, file, or release security interests on a loan. ➢ Fees for credit reports. ➢ Premiums for credit life insurance, credit accident and health insurance, and unemployment insurance, if the insurance is requested by the borrower.

LOAN TERMS	SMALL LOAN LAW (R.C. 1321.01 to 1321.19)
	➢ Premiums for insurance covering the reasonable risks of loss or damage of property used as security for the loan. ➢ For open-end loans, an annual credit line charge for the first year not exceeding the greater of $30 or 1% of the original credit line, and for subsequent years, not exceeding $20. ➢ For precomputed loans, deferment charges for the deferment of unpaid installments. ➢ Costs and disbursements to which the licensee is entitled by law in connection with a civil action to collect a loan or to realize on a security interest after default. ➢ Check-cashing fee (see "**Check-cashing fee**," below).
Secured or unsecured *(R.C. 1321.12)*	Unsecured or secured by personal property only.
Restrictions on obtaining loans	No provision.

Definition of interest

"Interest" under the Small Loan Law is defined as all charges payable directly or indirectly by a borrower to a licensee as a condition to a loan, but does not include default charges, deferment charges, insurance charges or premiums, court costs, loan origination charges, check collection charges, credit line charges, credit report charges, or other fees and charges specifically authorized by law. "Annual percentage rate" means the ratio of the interest on a loan to the unpaid principal balances on the loan for any period of time, expressed on an annual basis.[21]

Interest is to be calculated according to the actuarial method, unless the loan is open end. In that case, interest is to be computed using one of two methods specified in the Law.[22]

Check-cashing fee

Some licensees under the Small Loan Law provide the loan proceeds to a borrower in the form of a check. If the licensee also holds a check-cashers license, the licensee may charge the borrower a fee for cashing the check so long as the fee is not a condition of the loan.[23]

Under the Small Loan Law, a licensee that provides the loan proceeds in the form of a check may, under certain circumstances, charge a fee to cash the check.

Most loans made under the Mortgage Loan Law are unsecured.

Mortgage Loan Law

The name of this body of law is somewhat of a misnomer. The Mortgage Loan Law[24] was originally enacted as the "Second Mortgage Security Loan Act" because it initially covered only lenders that took second mortgages as security.[25] In 1979, the making of loans secured by other than real estate was permitted,[26] followed by the making of unsecured loans in 1981.[27] The taking of first liens on real property as security for a loan was authorized in 1989.[28] The Division of Financial Institutions recently reported that, for loans made under the Mortgage Loan Law in 2010, 0.2% were secured by a residential mortgage, 6% were secured by other than a residential mortgage, and 93.3% were unsecured.[29] Loans may be structured as interest-bearing, precomputed, or open-end.[30]

Entities exempt from the Law include those chartered under Ohio law, the law of another state, or federal law as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any of those depository institutions if the subsidiary is regulated by a federal banking agency and is owned and controlled by the depository institution.[31]

LOAN TERMS	**MORTGAGE LOAN LAW** ***(R.C. 1321.51 to 1321.60)***
Maximum loan amount	No provision.
Duration of a loan	No provision.
Maximum interest charges *(R.C. 1321.57(A); 1321.571)*	21% interest per year OR 25% APR (see "**Definition of interest**," below).
Other permissible fees or charges *(R.C. 1321.57; 1321.58)*	➢ <u>Loan origination charges</u> on loans that are not open end: (1) For **secured** loans: (a) If principal amount is $500 or less – $15; (b) If principal amount is more than $500 but less than $1,000 – $30; (c) If principal amount is at least $1,000 but less than $2,000 – $100; (d) If principal amount is at least $2,000 but less than $5,000 – $200;

LOAN TERMS	**MORTGAGE LOAN LAW** ***(R.C. 1321.51 to 1321.60)***
	(e) If principal amount is $5,000 or more – the greater of $250 or 1% of the principal amount.[32] (2) For **unsecured** loans: (a) If principal amount is $500 or less – $15; (b) If principal amount is more than $500 but less than $1,000 – $30; (c) If principal amount is at least $1,000 but less than $5,000 – $100; (d) If principal amount is $5,000 or more – the greater of $250 or 1% of the principal amount.[33] ➢ Default (late) charges on any installment not paid in full within 10 days after its due date, not exceeding the greater of 5% of the scheduled installment or $15. For open-end loans, default charges on any required minimum payment not paid in full within 10 days after its due date, not exceeding the greater of 5% of the required minimum payment or $15. ➢ Check collection charges of up to $20 for each check dishonored, plus any charges passed from other financial institutions for each check. ➢ Fees authorized by law to record, file, or release security interests and mortgages on a loan. ➢ Fees for credit investigations not to exceed $10. ➢ Premiums for credit life insurance, credit accident and health insurance, and unemployment insurance, if the insurance is requested by the borrower. ➢ Premiums for insurance covering the reasonable risks of loss or damage of property used as security for the loan. ➢ For open-end loans, an annual credit line charge: (1) For the first year: (a) If the original credit line is less than $5,000 – $150; (b) If the original credit line is $5,000 or more – the greater of 1% of the original credit line or $250.

LOAN TERMS	**MORTGAGE LOAN LAW** ***(R.C. 1321.51 to 1321.60)***
	(2) For subsequent years, the greater of ½% of the credit line on the anniversary date or $50. ➢ For loans secured by real estate: (1) Up to two points; (2) Prepayment penalties, under certain circumstances;[34] (3) Reasonable closing costs paid to third parties. ➢ For precomputed loans, deferment charges for the deferment of unpaid installments. ➢ Costs and disbursements to which the registrant is entitled by law in connection with a civil action to collect a loan or to realize on a security interest or mortgage after default.
Secured or unsecured *(R.C. 1321.52(C))*	Unsecured or secured by real estate (first lien or other than first lien) or personal property.
Restrictions on obtaining loans	No provision.

Definition of interest

"Interest" in this context is defined as all charges payable directly or indirectly by a borrower to a registrant as a condition of a loan, but does not include default charges, deferment charges, insurance charges or premiums, court costs, loan origination charges, check collection charges, credit line charges, points, prepayment penalties, or other fees and charges specifically authorized by law. "Annual percentage rate" means the ratio of the interest on a loan to the unpaid principal balances on the loan for any period of time, expressed on an annual basis.[35]

Interest is to be calculated according to the actuarial method, unless the loan is open end. In that case, interest is to be computed using one of two methods specified in the Law.[36]

Other payday lending issues

Growth of auto title loans

Similar to more traditional "payday loans," auto title loans are short-term, high cost loans, but these loans are for larger amounts and are secured by the borrower's vehicle title. In reality, most of these loans are over-secured, as the vehicle is usually worth much more than the loan amount. Upon maturity of the loan, a lump sum repayment is due. If the loan is repaid, the lender returns the vehicle title to the borrower. If the borrower is not able to repay the loan in full, the lender typically renews the loan for another term, charges interest, and assesses additional fees. The borrower pays the interest and fees due for the original loan, while the principal amount of the loan is rolled over into a new loan. The short-term nature of these loans and their high cost often result in borrowers rolling their loans over numerous times. If the borrower is ultimately unable to repay the loan, the lender will typically repossess the vehicle.[37]

Ohio law does not provide for discreet regulation of title loan lenders. In 2011, the Division of Financial Institutions began requiring that these lenders obtain either a license under the Small Loan Law or a certificate of registration under the Mortgage Loan Law. Prior to that time, title loan lenders were not licensed by the Division.[38]

Lending to military personnel

Federal law significantly limits the cost and terms of certain closed-end consumer credit extended to members of the military and their dependents.[39] These credit transactions include payday loans (in the amount of $2,000 or less with a duration of not more than 91 days) and vehicle title loans (with a duration of not more than 181 days). Credit transactions secured by an interest in the borrower's residence, among others, are not included.[40]

The maximum rate of interest that can be charged a covered borrower is 36% APR. All fees and charges associated with the extension of credit are to be included in the calculation of the APR.[41]

Jurisdiction over Internet lending

Internet payday lenders may be located anywhere, including outside the United States. As such, the power of states to regulate Internet payday lenders that make loans to state residents is unclear.[42]

The power of states to regulate Internet payday loans is unclear.

In Ohio, the Short-Term Loan Law expressly prohibits the making or offering of a short-term loan via the Internet, mail, or telephone.[43] As mentioned above, however, no lenders are currently licensed under the Short-Term Loan Law.

The Small Loan Law provides as follows:[44]

--A small loan made outside Ohio that has a greater rate of interest or charges than are permitted under the Small Loan Law is not enforceable in Ohio unless the loan is legally made in another state in accordance with a regulatory loan law "similar in principle" to the Small Loan Law.

--All loan contracts made with Ohio residents are considered as made within Ohio and subject to Ohio law, regardless of any statement in the contract to the contrary, except with respect to licensing if the lender is licensed in accordance with a regulatory loan law "similar in principle" to the Small Loan Law.

--If a loan of $5,000 or less is made to a borrower residing in Ohio by a lender whose office is located outside Ohio and whose primary business consists of making loans by mail, the loan is not enforceable in Ohio for a greater rate of interest or charges than is authorized under the Small Loan Law.

Lastly, by rule adopted by the Superintendent of Financial Institutions, a loan made pursuant to the Small Loan Law that is made by "direct mail" must be made from a duly licensed location.[45] "Direct mail" is defined as a loan arranged via an application through the U.S. postal mail or Internet and the loan proceeds delivered through the U.S. mail or electronic transmission to the benefit of a borrower.[46]

The Mortgage Loan Law generally provides that all loans made to Ohio residents are considered as made within Ohio and subject to Ohio law regardless of any statement in the contract or note to the contrary.[47]

Endnotes

[1] Former R.C. 1315.39 to 1315.44.

[2] Ohio Consumer Law, § 23:6 (West 2012-2013).

[3] "The History of Payday Lending in Ohio," from a continuing legal education seminar on Regulating Investment and Financial Services, presented by Jacqueline Mallett, Consumer Finance Chief Counsel, Division of Financial Institutions on July 27, 2012.

[4] See *Payday Lending in America: Who Borrows, Where They Borrow, and Why*, Safe Small-Dollar Loans Research Project, The PEW Charitable Trusts, pg. 13, available at www.pewstates.org.

[5] R.C. 1321.35 to 1321.48.

[6] www.sos.state.oh.us/sos/upload/publications/election/Issues_08.pdf.

[7] www.sos.state.oh.us/sos/elections/Research/electResultsMain/2008ElectionResults.aspx.

[8] "The History of Payday Lending in Ohio," from a continuing legal education seminar on Regulating Investment and Financial Services, presented by Jacqueline Mallett, Consumer Finance Chief Counsel, Division of Financial Institutions on July 27, 2012.

[9] Housing Research & Advocacy Center, *The New Face of Payday Lending in Ohio* (March 2009), www.thehousingcenter.org/Publications/Research-Reports.html (accessed December 20, 2012).

[10] *Ohio Neighborhood Finance, Inc. v. Scott*, Case No. 09CVF01488, Elyria Municipal Court, 2011.

[11] *See* 15 United States Code (U.S.C.) § 1606. The TILA definition of annual percentage rate broadly includes all interest and other fees and charges and represents the cost of the credit expressed as a yearly rate (12 Code of Federal Regulations (C.F.R.) §§ 226.14 and 226.22).

[12] *Ohio Neighborhood Finance, Inc. v. Scott*, Case No. 11CA010030, Ninth District Court of Appeals, Lorain County, 2012.

[13] See *Law of Lending,* www.toledoblade.com/Featured-Editorial-Home/2012/12/17/Law-of-lending (accessed December 17, 2012) and *State appeals court restricts payday lenders' interest rates*, www.cleveland.com/consumeraffairs/index.ssf/2012/12/breaking_state_appeals_court_r.html (accessed December 18, 2012).

[14] R.C. 1321.35(C) and (D) and 1321.40(A).

[15] R.C. 1321.41.

[16] R.C. 1321.46.

[17] R.C. 1321.461.

[18] R.C. 1321.01 to 1321.19.

[19] R.C. 1321.02.

[20] R.C. 1321.13(A) and 1321.16. For the definition of "interest bearing" and "precomputed" loans, see R.C. 1321.01.

[21] R.C. 1321.01(A)(5) and (10).

[22] R.C. 1321.01(A)(8), 1321.13(A), and 1321.16(B).

[23] Ohio Consumer Law, § 23:4 (West 2012-2013).

[24] R.C. 1321.51 to 1321.60.

[25] Am. Sub. H.B. 403 of the 106th General Assembly.

[26] Am. H.B. 511 of the 113th General Assembly.

[27] H.B. 134 of the 114th General Assembly.

[28] Am. Sub. H.B. 497 of the 118th General Assembly. In the instance of a first mortgage, however, federal preemption may remove a particular lender from regulation under the Mortgage Loan Law. *See* Ohio Consumer Law, § 14:39 (West 2012-2013).

[29] "The History of Payday Lending in Ohio," from a continuing legal education seminar on Regulating Investment and Financial Services, presented by Jacqueline Mallett, Consumer Finance Chief Counsel, Division of Financial Institutions on July 27, 2012.

[30] R.C. 1321.57(A) and 1321.58(A). For the definition of "interest bearing" and "precomputed" loans, see R.C. 1321.51.

[31] R.C. 1321.53(D).

[32] If a refinancing occurs within 90 days after the date of the refinanced loan, a registrant is prohibited from imposing loan origination charges on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan (R.C. 1321.57(J)(2)).

[33] *Id.*

[34] R.C. 1321.57(G).

[35] R.C. 1321.51(E) and (K).

[36] R.C. 1321.51(H), 1321.57(A), and 1321.58(B).

[37] Consumer Federation of America and Center for Responsible Lending, *Car Title Lending, Driving Borrowers to Financial Ruin* (April 14, 2005), available at www.consumerfed.org/pdfs/driving_borrowers_rpt.pdf.

[38] Telephone interview with Jacqueline Mallett, Consumer Finance Chief Counsel, Division of Financial Institutions (June 6, 2012).

[39] 10 U.S.C. § 987 and 32 C.F.R. §§ 232.1 to 232.11. To be covered by these protections, the borrower must be a regular or reserve member of the armed forces on active duty under a call or order exceeding 30 days, such a member serving on Active Guard and Reserve duty, or a dependent of any such member (32 C.F.R. § 232.3(c)).

[40] 32 C.F.R. § 232.3(b).

[41] 10 U.S.C. § 987(b) and (i)(4).

[42] Ohio Consumer Law, § 23:33 (West 2012-2013).

[43] R.C. 1321.36(B).

[44] R.C. 1321.17.

[45] Ohio Administrative Code (O.A.C.) 1301:8-2-07(C).

[46] O.A.C. 1301:8-2-01(B).

[47] R.C. 1321.52(B).

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