

AN ACT

To amend sections 1321.35, 1321.36, 1321.39, 1321.40, 1321.41, 1321.422, 1321.99, and 4712.99, to enact new section 1321.46 and sections 1321.141, 1321.391, 1321.401, 1321.402, 1321.403, 1321.411, 1321.592, and 4712.071, and to repeal sections 1321.46 and 1321.461 of the Revised Code to modify the Short-Term Loan Act, to specify a minimum loan amount and duration for loans made under the Small Loan Law and General Loan Law, and to limit the authority of credit services organizations to broker extensions of credit for buyers.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1321.35, 1321.36, 1321.39, 1321.40, 1321.41, 1321.422, 1321.99, and 4712.99 be amended and new section 1321.46 and sections 1321.141, 1321.391, 1321.401, 1321.402, 1321.403, 1321.411, 1321.592, and 4712.071 of the Revised Code be enacted to read as follows:

Sec. 1321.141. (A) A licensee shall not make a loan under sections 1321.01 to 1321.19 of the Revised Code that meets either of the following conditions:

(1) The amount of the loan is one thousand dollars or less.

(2) The loan has a duration of one year or less.

(B) A licensee shall not engage in any act or practice to evade the requirement of division (A) of this section, including by assisting a borrower to obtain a loan on terms that would be prohibited by that division.

(C) No licensee shall fail to comply with this section.

Sec. 1321.35. As used in sections 1321.35 to 1321.48 of the Revised Code:

(A) "Short-term loan" means a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code.

(B) "Superintendent of financial institutions" includes the deputy superintendent for consumer finance as provided in section 1181.21 of the Revised Code.

(C) "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 a short-term loan made pursuant to sections 1321.35 to 1321.48, but does not include the monthly maintenance fees, the loan origination charge, the check collection charge, or the check cashing fee authorized under section 1321.40 of the Revised Code.

(D) "Annual percentage rate" has the same meaning as in the "Truth in Lending Act," 82 Stat. 149 (1980), 15 U.S.C. 1606, as implemented by regulations of the ~~board of governors of the federal reserve system~~ consumer financial protection bureau. All fees and charges, including interest and the

loan origination charge and monthly maintenance fees authorized under section 1321.40 of the Revised Code, shall be included in the computation of the annual percentage rate. Fees and charges for single premium credit insurance and other ancillary products sold in connection with the credit transaction shall be included in the calculation of the annual percentage rate.

(E) "Licensee" means a person licensed to make short-term loans under sections 1321.35 to 1321.48 of the Revised Code.

Sec. 1321.36. (A) No person shall engage in the business of making short-term loans to a borrower in Ohio, or, in whole or in part, make, offer, or broker a loan, or assist a borrower in Ohio to obtain such a loan, without first having obtained a license from the superintendent of financial institutions under sections 1321.35 to 1321.48 of the Revised Code. ~~No licensee shall make, offer, or broker a loan, or assist a borrower to obtain such a loan, when the borrower is not physically present in the licensee's business location.~~

~~(B) No person not located in Ohio shall make a short-term loan to a borrower in Ohio from an office not located in Ohio. Nothing in this section prohibits a business not located or licensed in Ohio from lending funds to Ohio borrowers who physically visit the out-of-state office of the business and obtain the disbursement of loan funds at that location. No person shall make, offer, or broker a loan, or assist a borrower to obtain a loan, via the telephone, or mail, or internet.~~

(C) Any loan made in violation of this section is void, and the lender has no right to collect, receive, or retain any principal, interest, fees, or other charges in connection with the loan.

(D) Sections 1321.35 to 1321.48 of the Revised Code do not apply to any entity chartered and lawfully doing business under the authority of any law of this state, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, which subsidiary is regulated by a federal banking agency and is owned and controlled by a depository institution.

Sec. 1321.39. A licensee ~~under sections 1321.35 to 1321.48 of the Revised Code~~ may engage in the business of making loans provided that each loan meets all of the following conditions:

(A) The total amount of the loan does not exceed ~~five hundred one thousand~~ one thousand dollars.

~~(B) The (1) Subject to division (B)(2) of this section, the minimum duration of the loan, as specified in the loan contract required under division (C) of this section, is not less than thirty-one ninety-one days and the maximum duration of the loan is one year.~~

(2) The minimum duration of the loan may be less than ninety-one days if the total monthly payment on the loan does not exceed an amount that is six per cent of the borrower's verified gross monthly income or seven per cent of the borrower's verified net monthly income, whichever is greater.

(C) The loan is made pursuant to a written loan contract that sets forth the terms and conditions of the loan. A copy of the loan contract shall be provided to the borrower. The loan contract shall disclose in a clear and concise manner all of the following:

(1) The total amount of fees and charges the borrower will be required to pay in connection with the loan pursuant to the loan contract;

(2) The total amount of each payment, when each payment is due, and the total number of payments that the borrower will be required to make under the loan contract;

(3) A statement, printed in boldface type of the minimum size of ten points, as follows:

"WARNING: The cost of this loan is higher than the average cost charged by financial institutions, such as banks or credit unions, on substantially similar loans. A financial institution may be able to offer you a similar loan at a lower cost."

(4) A statement, printed in a minimum font size of ten points, which informs the borrower that complaints regarding the loan or lender may be submitted to the department of commerce division of financial institutions and includes the correct telephone number and mailing address for the department;

(5) Any disclosures required under the "Truth in Lending Act," 82 Stat. 146 (1974), 15 U.S.C. 1601, et seq.;

~~(6) The rate of interest contracted for under the loan contract as an annual percentage rate based on the sum of the principal of the loan and the loan origination fee, check collection charge, and all other fees or charges contracted for under the loan contract.;~~

~~(7) A statement, printed in a minimum font size of ten points, as follows: "You have the right to rescind or cancel this loan by returning the originally contracted loan amount by five p.m. of the third business day immediately following the day you enter into this contract."~~

~~(8) A statement, printed in a minimum font size of ten points, as follows: "Electronic payment is optional. You have the right to revoke or remove your authorization for electronic payment at any time."~~

~~(D) The loan contract includes a provision that offers the borrower an optional extended payment plan that may be invoked by the borrower at any time before the maturity date of the loan. To invoke the extended payment plan, the borrower shall return to the office where the loan was made and sign an amendment to the original loan agreement reflecting the extended terms of the loan. The extended payment plan shall allow the borrower to repay the balance by not less than sixty days from the original maturity date. No additional fees or charges may be applied to the loan upon the borrower entering the extended payment plan. The person originating the loan for the licensee shall identify verbally to the borrower the contract provision regarding the extended payment plan, and the borrower shall verify that the provision has been identified by initialing the contract adjacent to the provision is a precomputed loan and is payable in substantially equal installments consisting of principal, fees, and interest combined. For purposes of this division, "precomputed loan" means a loan in which the debt is a sum comprising the principal amount and the amount of fees and interest computed in advance on the assumption that all scheduled payments will be made when due.~~

~~(E) The loan may be rescinded or canceled on or before five p.m. of the third business day immediately following the day of the loan transaction upon the borrower returning the originally contracted loan amount.~~

~~Sec. 1321.391. If the duration of a short-term loan is ninety-one days or greater, the licensee shall determine the recommended length of a loan based on the borrower's verified monthly income as described in division (B)(2) of section 1321.39 of the Revised Code. The licensee shall provide the borrower with a written copy of its recommendation, which is not binding on the borrower.~~

~~Sec. 1321.40. A person licensed pursuant to sections 1321.35 to 1321.48 of the Revised Code licensee may charge, collect, and receive only the following fees and charges in connection with a short-term loan:~~

~~(A) Interest calculated in compliance with 15 U.S.C. 1606, and not exceeding an annual~~

~~percentage a rate greater than of twenty-eight per cent per annum;~~

~~(B)(1) Except as otherwise provided in division (B)(2) of this section, a monthly maintenance fee that does not exceed the lesser of ten per cent of the originally contracted loan amount or thirty dollars, provided the fee is not added to the loan balance on which interest is charged;~~

~~(2) A licensee shall not charge, collect, or receive a monthly maintenance fee if the borrower is a person on active duty in the armed forces of the United States or a dependent of that person.~~

~~(C) If the originally contracted loan amount is five hundred dollars or more, a loan origination charge in the amount of two per cent of the originally contracted loan amount, provided the loan origination charge is not added to the loan balance on which interest is charged;~~

~~(D) One check collection charge per loan not exceeding an amount equal to twenty dollars plus any amount passed on from other financial institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the borrower are set forth in the written loan contract described in division (C) of section 1321.39 of the Revised Code;~~

~~(E) If a licensee provides the proceeds of a loan in the form of a check, a fee to cash that check in an amount not exceeding ten dollars;~~

~~(F) Damages, costs, and disbursements to which the licensee may become entitled to by law in connection with any civil action to collect a loan after default, except that the total amount of damages and costs shall not exceed the originally contracted loan amount.~~

~~Sec. 1321.401. A licensee may refinance a short-term loan provided that all of the following apply to the refinanced loan:~~

~~(A) The loan is a short-term loan.~~

~~(B) Interest on the loan does not exceed a rate of twenty-eight per cent per annum.~~

~~(C) The licensee does not charge, collect, or receive the monthly maintenance fee described in division (B) of section 1321.40 of the Revised Code.~~

~~Sec. 1321.402. If a short-term loan is prepaid in full or refinanced prior to the loan's maturity date, the licensee shall refund to the borrower a prorated portion of the interest, monthly maintenance fees, and all other charges based on a ratio of the number of days the loan was outstanding and the number of days for which the loan was originally contracted. For purposes of this section, the monthly maintenance fee is not considered to be fully earned at the beginning of a month.~~

~~Sec. 1321.403. Notwithstanding any provision of sections 1321.35 to 1321.48 of the Revised Code to the contrary, a licensee shall not charge, collect, or receive in connection with a short-term loan a total amount of fees and charges that exceeds sixty per cent of the originally contracted loan amount. For purposes of this section, all charges made in connection with the loan shall be included when calculating the total loan charges except for all of the following:~~

~~(A) The check collection charge authorized under section 1321.40 of the Revised Code;~~

~~(B) The check cashing fee authorized under section 1321.40 of the Revised Code;~~

~~(C) The interest charges on a loan that is refinanced in accordance with section 1321.401 of the Revised Code.~~

~~Sec. 1321.41. No person licensed pursuant to sections 1321.35 to 1321.48 of the Revised Code licensee shall do any of the following:~~

(A) Violate section 1321.36 of the Revised Code;

(B) Make a loan that does not comply with section 1321.39 of the Revised Code;

(C) Charge, collect, or receive, directly or indirectly, credit insurance premiums, charges for any ancillary product sold, or any additional fees, interest, or charges in connection with a loan, other than fees and charges permitted by section 1321.40 of the Revised Code ~~and costs or disbursements to which the licensee may become entitled to by law in connection with any civil action to collect a loan after default;~~

(D) Collect treble damages pursuant to division (A)(1)(b)(ii) of section 2307.61 of the Revised Code in connection with any civil action to collect a loan after a default due to a check, negotiable order of withdrawal, share draft, or other negotiable instrument that was returned or dishonored for insufficient funds;

(E) ~~Make~~ Except as otherwise provided in section 1321.401 of the Revised Code, make a short-term loan to a borrower if there exists an outstanding loan between the licensee and that borrower, if a loan between any licensee and that borrower was terminated on the same business day, if the borrower has more than one outstanding loan, if the loan would obligate the borrower to repay a total amount of more than five hundred dollars to licensees, or indebt the borrower, to licensees, for an amount that is more than twenty-five per cent of the borrowers gross monthly salary not including bonus, overtime, or other such compensation, based on a payroll verification statement presented by the borrower, and any of the following:

(1) The licensee;

(2) A person related to the licensee by common ownership or control;

(3) Any employee or agent of the licensee.

(F) Bring or threaten 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. Nothing herein prohibits 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;

~~(G) Make a short-term loan to a borrower for purposes of retiring an existing short-term loan between any licensee and that borrower;~~

~~(H)~~ Require the borrower to waive the borrower's right to legal recourse under any otherwise applicable provision of state or federal law;

~~(I)~~ (H) Accept the title or registration of a vehicle, real property, physical assets, or other collateral as security for the obligation;

~~(J)~~ (I) Engage in any device or subterfuge to evade the requirements of sections 1321.35 to 1321.48 of the Revised Code including assisting a borrower to obtain a loan on terms that would be prohibited by sections 1321.35 to 1321.48 of the Revised Code, 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;

~~(K)~~ (J) Assess or charge a borrower a fee for prepaying the loan in full prior to the maturity date;

~~(L)~~ (K) Fail to comply with section 1321.45 of the Revised Code;

~~(M)-(L)~~ Recommend to a borrower that the borrower obtain a loan for a dollar amount that is higher than the borrower has requested;

~~(N)~~ Make a loan to a borrower that has received two loans within the previous ninety days from licensees, unless the borrower has completed during that period a financial literacy program approved by the superintendent;

~~(O)-(M)~~ Draft funds electronically from any depository financial institution in this state, or bill any credit card issued by such an institution without written approval of the borrower. Nothing in this division shall prohibit the conversion of a negotiable instrument into an electronic form for processing through the automated clearing house system.

~~(P)-(N)~~ Make, publish, or otherwise disseminate, directly or indirectly, any misleading or false advertisement, or engage in any other deceptive trade practice;

~~(Q)-(O)~~ Offer any incentive to a borrower in exchange for the borrower taking out multiple loans over any period of time, or provide a short-term loan at no charge or at a discounted charge as compensation for any previous or future business;

~~(R)~~ Make a loan to a borrower if the borrower has received a total of four or more loans, from licensees, in the calendar year.

~~(S)-(P)~~ Present 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;

~~(T)-(Q)~~ Change the check number, or in any other way alter 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 submit false information about any check, negotiable order of withdrawal, or share draft to the automated clearing house system;

~~(R)~~ Make a short-term loan to a borrower if the loan will result in a total outstanding principal of more than two thousand five hundred dollars in short-term loans made by licensees to that borrower at any one time. Prior to making a short-term loan, a licensee shall require each borrower to sign a written declaration that, pursuant to this division, the borrower is eligible to receive the loan, and shall make a concerted effort to verify the borrower's eligibility.

~~(S)~~ Fail to accept cash or a certified check from a third party when submitted on behalf of the borrower for repayment of a short-term loan in full or in part;

~~(T)~~ Contact a borrower for any reason other than for the borrower's benefit regarding upcoming payments, options for obtaining loans, payment options, payment due dates, the effect of default, or, after default, receiving payments or other actions permitted by the licensee; to advise the borrower of missed payments or dishonored checks; or to assist the transmittal of payments via a third-party mechanism;

~~(U)~~ In the event that a short-term loan or its servicing is sold or assigned, fail to provide notice and the information needed to make future payments;

~~(V)~~ Make a loan to a borrower that includes a demand feature that permits the licensee, in the event the borrower fails to meet the repayment terms for any outstanding balance, to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, unless both of the following requirements are met:

~~(1)~~ Not earlier than ten days after the borrower's payment was due, the licensee provides

written notice to the borrower of the termination of the loan.

(2) In addition to the outstanding balance, the licensee collects only prorated interest and the fees earned up to the termination of the loan. For purposes of division (V)(2) of this section, the outstanding balance and prorated interest and fees shall be calculated as if the borrower had voluntarily prepaid the loan in full on the date of termination.

Sec. 1321.411. A licensee shall not attempt to collect from a borrower's account after two consecutive attempts have failed, unless the licensee obtains new written authorization from the borrower to electronically transfer or withdraw funds from the borrower's account.

Sec. 1321.422. (A) Every licensee shall keep and use in the licensee's business such books, accounts, records, and loan documents as will enable the division of financial institutions to determine whether the licensee is complying with sections 1321.35 to 1321.48 of the Revised Code and with the orders and rules made by the division under those sections. Such books, accounts, records, and loan documents shall be segregated from those pertaining to transactions that are not subject to sections 1321.35 to 1321.48 of the Revised Code. Every licensee shall preserve the books, accounts, records, and loan documents pertaining to loans made under sections 1321.35 to 1321.48 of the Revised Code 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.

(B)(1) As required by the superintendent of financial institutions, each licensee shall file with the division each year a report under oath or affirmation, on forms supplied by the division, concerning the business and operation for the preceding calendar year. If a licensee has more than one place of business in this state, the licensee shall furnish a report for each location.

(2) The division shall publish annually and make available to the public an analysis of the information required under division (B)(1) of this section, but the individual reports shall not be public records and shall not be open to public inspection. The published analysis shall include all of the following:

(a) The total number of borrowers, loans, defaulted loans, and charged-off loans and the total dollar value of the charged-off loans;

(b) The average loan size, average contracted and average experienced annual percentage rate, average charges per loan, total contracted loan charges, and total loan charges actually paid;

(c) The total number of check collection charges and the total dollar value of those charges;

(d) The total number of licensee business locations and the average number of borrowers per location;

(e) Any other nonprivate information determined by the superintendent.

Sec. 1321.46. (A) Before initiating a short-term loan transaction with a borrower, a licensee shall make a reasonable attempt to verify the borrower's income for purposes of division (B)(2) of section 1321.39 and section 1321.391 of the Revised Code. At a minimum, the licensee shall obtain from the borrower one or more recent pay stubs or other written evidence of recurring income, such as a bank statement. The written evidence shall include at least one document that, when presented to the licensee, is dated not earlier than forty-five days prior to the borrower's initiation of the short-term loan transaction. If the borrower intends to provide a bank statement, the licensee shall permit

the borrower to delete from the statement the information regarding to whom the debits listed on the statement are payable.

(B) The superintendent of financial institutions may adopt rules under section 1321.43 of the Revised Code that set forth any other procedures the superintendent considers necessary to ensure accurate verification of borrower income.

Sec. 1321.592. (A) A registrant shall not make a loan under sections 1321.51 to 1321.60 of the Revised Code that meets either of the following conditions:

(1) The amount of the loan is one thousand dollars or less.

(2) The loan has a duration of one year or less.

(B) A registrant shall not engage in any act or practice to evade the requirement of division (A) of this section, including by contracting with a borrower to make a loan on terms that would be prohibited by that division.

(C) No registrant shall fail to comply with this section.

Sec. 1321.99. (A) Whoever violates section 1321.02 of the Revised Code is guilty of a felony of the fifth degree.

(B) Whoever violates section 1321.13 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than six months, or both.

(C) Whoever violates section 1321.14 of the Revised Code shall be fined not less than fifty nor more than two hundred dollars for a first offense; for a second offense such person shall be fined not less than two hundred nor more than five hundred dollars and imprisoned for not more than six months.

(D) Whoever willfully violates section 1321.57, 1321.58, division (A), (B), or (C) of section 1321.59, 1321.591, or 1321.60 of the Revised Code is guilty of a minor misdemeanor and shall be fined not less than one nor more than five hundred dollars.

(E)(1) Whoever violates section 1321.63 or division (H), (I), or (K) of section 1321.69 of the Revised Code is guilty of a felony of the fifth degree.

(2) A violation of section 1321.63 or division (K) of section 1321.69 of the Revised Code is a strict liability offense and section 2901.20 of the Revised Code does not apply.

(F) Whoever violates division (A) of section 1321.73 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(G) Whoever violates section 1321.41 of the Revised Code is guilty of a misdemeanor of the first degree.

(H) Whoever violates section 1321.141 or 1321.592 of the Revised Code is guilty of a minor misdemeanor and shall be fined not less than one hundred nor more than five hundred dollars.

(I) The offenses established under sections 1321.141, 1321.41, and 1321.592 of the Revised Code are strict liability offenses and section 2901.20 of the Revised Code does not apply. The designation of these offenses as strict liability offenses shall not be construed to imply that any other offense for which there is no specified degree of culpability, whether in this section or another section of the Revised Code, is not a strict liability offense.

(J) The imposition of fines pursuant to this section does not preclude the imposition of any administrative fines or civil penalties authorized under section 1321.54 or any other section of the Revised Code.

Sec. 4712.071. No credit services organization shall sell, provide, or perform any of the services authorized under division (C)(1) of section 4712.01 of the Revised Code in connection with an extension of credit that meets any of the following conditions:

(A) The amount of credit is less than five thousand dollars.

(B) The repayment term is one year or less.

(C) The annual percentage rate exceeds twenty-eight per cent. For purposes of this division, "annual percentage rate" has the same meaning as in the "Truth in Lending Act," 82 Stat. 149 (1980), 15 U.S.C. 1606, as implemented by regulations of the consumer financial protection bureau.

Sec. 4712.99. (A) Whoever violates division (J) of section 4712.02, division (E) of section 4712.04, division (D) or (E) of section 4712.05, division (A) of section 4712.06, section 4712.07 or 4712.08, or division (A) of section 4712.09 of the Revised Code is guilty of a felony of the fifth degree.

(B)(1) Whoever violates section 4712.071 of the Revised Code is guilty of a minor misdemeanor and shall be fined not less than one hundred nor more than five hundred dollars.

(2) The offense established under section 4712.071 of the Revised Code is a strict liability offense and section 2901.20 of the Revised Code does not apply. The designation of this offense as a strict liability offense shall not be construed to imply that any other offense for which there is no specified degree of culpability, whether in this section or another section of the Revised Code, is not a strict liability offense.

SECTION 2. That existing sections 1321.35, 1321.36, 1321.39, 1321.40, 1321.41, 1321.422, 1321.99, and 4712.99 and sections 1321.46 and 1321.461 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act apply only to loans that are made, or extensions of credit that are obtained, on or after the date that is one hundred eighty days after the effective date of this act.

SECTION 4. Section 1321.99 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 199 and Sub. S.B. 24 of the 132nd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____