

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 123

Representatives Koehler, Ashford

A BILL

To amend sections 1321.35, 1321.36, 1321.39, 1
1321.40, 1321.41, 1321.422, 1321.99, and 2
4712.99, to enact new section 1321.46 and 3
sections 1321.141, 1321.401, 1321.402, 1321.403, 4
1321.411, 1321.595, and 4712.071, and to repeal 5
sections 1321.46 and 1321.461 of the Revised 6
Code to modify the Short-Term Loan Act, to 7
specify a minimum duration requirement for loans 8
made under the Small Loan Law and Mortgage Loan 9
Law, and to limit the authority of credit 10
services organizations to broker extensions of 11
credit for buyers. 12

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1321.35, 1321.36, 1321.39, 13
1321.40, 1321.41, 1321.422, 1321.99, and 4712.99 be amended and 14
new section 1321.46 and sections 1321.141, 1321.401, 1321.402, 15
1321.403, 1321.411, 1321.595, and 4712.071 of the Revised Code 16
be enacted to read as follows: 17

Sec. 1321.141. (A) A licensee shall not make a loan under 18
sections 1321.01 to 1321.19 of the Revised Code that has a 19

duration of less than one hundred eighty days. 20

(B) A licensee shall not engage in any act or practice to 21
evade the requirement of division (A) of this section, including 22
by assisting a borrower to obtain a loan on terms that would be 23
prohibited by that division. 24

(C) No licensee shall fail to comply with this section. 25

Sec. 1321.35. As used in sections 1321.35 to 1321.48 of 26
the Revised Code: 27

(A) "Short-term loan" means a loan made pursuant to 28
sections 1321.35 to 1321.48 of the Revised Code. 29

(B) "Superintendent of financial institutions" includes 30
the deputy superintendent for consumer finance as provided in 31
section 1181.21 of the Revised Code. 32

(C) "Interest" means all charges payable directly or 33
indirectly by a borrower to a licensee as a condition to a loan, 34
including fees, ~~loan origination charges,~~ service charges, 35
renewal charges, ~~credit insurance premiums,~~ and any ancillary 36
product sold in connection with a short-term loan made pursuant 37
to sections 1321.35 to 1321.48, but does not include the 38
monthly maintenance fees or the check collection charge 39
authorized under section 1321.40 of the Revised Code. 40

(D) "Annual percentage rate" has the same meaning as in 41
the "Truth in Lending Act," 82 Stat. 149 (1980), 15 U.S.C. 1606, 42
as implemented by regulations of the ~~board of governors of the~~ 43
~~federal reserve system~~ consumer financial protection bureau. All 44
fees and charges, including interest and the monthly maintenance 45
fees authorized under section 1321.40 of the Revised Code, shall 46
be included in the computation of the annual percentage rate. 47
~~Fees and charges for single premium credit insurance and other~~ 48

~~ancillary products sold in connection with the credit~~ 49
~~transaction shall be included in the calculation of the annual~~ 50
~~percentage rate.~~ 51

(E) "Licensee" means a person licensed to make short-term 52
loans under sections 1321.35 to 1321.48 of the Revised Code. 53

Sec. 1321.36. (A) No person shall engage in the business 54
of making short-term loans to a borrower in Ohio, or, in whole 55
or in part, make, offer, or broker a loan, or assist a borrower 56
in Ohio to obtain such a loan, without first having obtained a 57
license from the superintendent of financial institutions under 58
sections 1321.35 to 1321.48 of the Revised Code. No licensee 59
shall make, offer, or broker a loan, or assist a borrower to 60
obtain such a loan, when the borrower is not physically present 61
in the licensee's business location. 62

(B) No person not located in Ohio shall make a short-term 63
loan to a borrower in Ohio from an office not located in Ohio. 64
Nothing in this section prohibits a business not located or 65
licensed in Ohio from lending funds to Ohio borrowers who 66
physically visit the out-of-state office of the business and 67
obtain the disbursement of loan funds at that location. No 68
person shall make, offer, or broker a loan, or assist a borrower 69
to obtain a loan, via the telephone, mail, or internet. 70

(C) Any loan made in violation of this section is void, 71
and the lender has no right to collect, receive, or retain any 72
principal, interest, fees, or other charges in connection with 73
the loan. 74

(D) Sections 1321.35 to 1321.48 of the Revised Code do not 75
apply to any entity chartered and lawfully doing business under 76
the authority of any law of this state, another state, or the 77

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. 78
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Sec. 1321.39. A licensee ~~under sections 1321.35 to 1321.48~~ 82
~~of the Revised Code~~ may engage in the business of making loans 83
provided that each loan meets all of the following conditions: 84

(A) The total amount of the loan does not exceed five 85
hundred dollars. 86

(B) The minimum duration of the loan, as specified in the 87
~~loan contract required under division (C) of this section, is~~ 88
~~not less than thirty-one days~~ is the number of months equal to 89
the sum of the originally contracted loan amount and all 90
applicable charges divided by the total monthly payment. 91

(C) The total monthly payment on the loan does not exceed 92
an amount that is five per cent of the borrower's verified gross 93
monthly income or six per cent of the borrower's verified net 94
monthly income, whichever is greater. 95

(D) The loan is made pursuant to a written loan contract 96
that sets forth the terms and conditions of the loan. A copy of 97
the loan contract shall be provided to the borrower. The loan 98
contract shall disclose in a clear and concise manner all of the 99
following: 100

(1) The total amount of fees and charges the borrower will 101
be required to pay in connection with the loan pursuant to the 102
loan contract; 103

(2) The total amount of each payment, when each payment is 104
due, and the total number of payments that the borrower will be 105
required to make under the loan contract; 106

(3) A statement, printed in boldface type of the minimum 107
size of ten points, as follows: "WARNING: The cost of this loan 108
is higher than the average cost charged by financial 109
institutions on substantially similar loans." 110

(4) A statement, printed in a minimum font size of ten 111
points, which informs the borrower that complaints regarding the 112
loan or lender may be submitted to the department of commerce 113
division of financial institutions and includes the correct 114
telephone number and mailing address for the department; 115

(5) Any disclosures required under the "Truth in Lending 116
Act," 82 Stat. 146 (1974), 15 U.S.C. 1601, et seq.; 117

~~(6) The rate of interest contracted for under the loan- 118
contract as an annual percentage rate based on the sum of the 119
principal of the loan and the loan origination fee, check- 120
collection charge, and all other fees or charges contracted for- 121
under the loan contract.; 122~~

(7) A statement, printed in a minimum font size of ten 123
points, as follows: "You have the right to rescind or cancel 124
this loan if you do so by five p.m. of the business day 125
immediately following the day you receive this contract." 126

(8) A statement, printed in a minimum font size of ten 127
points, as follows: "Electronic payment is optional. You have 128
the right to revoke or remove your authorization for electronic 129
payment at any time." 130

~~(D)-(E) The loan contract includes a provision that offers- 131
the borrower an optional extended payment plan that may be- 132
invoked by the borrower at any time before the maturity date of- 133
the loan. To invoke the extended payment plan, the borrower- 134
shall return to the office where the loan was made and sign an- 135~~

~~amendment to the original loan agreement reflecting the extended~~ 136
~~terms of the loan. The extended payment plan shall allow the~~ 137
~~borrower to repay the balance by not less than sixty days from~~ 138
~~the original maturity date. No additional fees or charges may be~~ 139
~~applied to the loan upon the borrower entering the extended~~ 140
~~payment plan. The person originating the loan for the licensee~~ 141
~~shall identify verbally to the borrower the contract provision~~ 142
~~regarding the extended payment plan, and the borrower shall~~ 143
~~verify that the provision has been identified by initialing the~~ 144
~~contract adjacent to the provision is a precomputed loan and is~~ 145
~~payable in substantially equal installments of principal, fees,~~ 146
~~and interest combined. For purposes of this division,~~ 147
~~"precomputed loan" means a loan in which the debt is a sum~~ 148
~~comprising the principal amount and the amount of fees and~~ 149
~~interest computed in advance on the assumption that all~~ 150
~~scheduled payments will be made when due.~~ 151

(F) The loan may be rescinded or canceled on or before 152
five p.m. of the business day immediately following the day of 153
the loan transaction. 154

Sec. 1321.40. ~~A person licensed pursuant to sections~~ 155
~~1321.35 to 1321.48 of the Revised Code—licensee may charge,~~ 156
collect, and receive only the following fees and charges in 157
connection with a short-term loan: 158

~~(A) Interest calculated in compliance with 15 U.S.C. 1606,~~ 159
~~and not exceeding an annual percentage a rate greater than of~~ 160
~~twenty-eight per cent per annum;~~ 161

~~(B) (1) Except as otherwise provided in division (B) (2) of~~ 162
~~this section, a monthly maintenance fee that does not exceed the~~ 163
~~lesser of five per cent of the originally contracted loan amount~~ 164
~~or twenty dollars, provided that the fee is not added to the~~ 165

loan balance on which interest is charged; 166

(2) A licensee shall not charge, collect, or receive a 167
monthly maintenance fee if the borrower is a person on active 168
duty in the armed forces of the United States or a dependent of 169
that person. 170

(C) One check collection charge per loan not exceeding an 171
amount equal to twenty dollars plus any amount passed on from 172
other financial institutions for each check, negotiable order of 173
withdrawal, share draft, or other negotiable instrument returned 174
or dishonored for any reason, provided that the terms and 175
conditions upon which check collection charges will be charged 176
to the borrower are set forth in the written loan contract 177
described in division ~~(C)~~ (D) of section 1321.39 of the Revised 178
Code; 179

~~(C)~~ (D) Damages, costs, and disbursements to which the 180
licensee may become entitled to by law in connection with any 181
civil action to collect a loan after default, except that the 182
total amount of damages and costs shall not exceed the 183
originally contracted loan amount. 184

Sec. 1321.401. A licensee may refinance a short-term loan 185
provided that all of the following apply to the refinanced loan: 186

(A) The loan is a short-term loan. 187

(B) Interest on the loan does not exceed a rate of twenty- 188
eight per cent per annum. 189

(C) The licensee does not charge, collect, or receive the 190
monthly maintenance fee described in division (B) of section 191
1321.40 of the Revised Code. 192

Sec. 1321.402. If a short-term loan is prepaid in full or 193

refinanced prior to the loan's maturity date, the licensee shall 194
refund to the borrower a prorated portion of the interest, 195
monthly maintenance fees, and all other charges based on a ratio 196
of the number of days the loan was outstanding and the number of 197
days for which the loan was originally contracted. For purposes 198
of this section, the monthly maintenance fee is not considered 199
to be fully earned at the beginning of a month. 200

Sec. 1321.403. Notwithstanding any provision of sections 201
1321.35 to 1321.48 of the Revised Code to the contrary, a 202
licensee shall not charge, collect, or receive in connection 203
with a short-term loan a total amount of fees and charges that 204
exceeds fifty per cent of the originally contracted loan amount. 205
For purposes of this section, all charges made in connection 206
with the loan shall be included when calculating the total loan 207
charges except for both of the following: 208

(A) The check collection charge authorized under section 209
1321.40 of the Revised Code; 210

(B) The interest charges on a loan that is refinanced in 211
accordance with section 1321.401 of the Revised Code. 212

Sec. 1321.41. ~~No person licensed pursuant to sections~~ 213
~~1321.35 to 1321.48 of the Revised Code~~ licensee shall do any of 214
the following: 215

(A) Violate section 1321.36 of the Revised Code; 216

(B) Make a loan that does not comply with section 1321.39 217
of the Revised Code; 218

(C) Charge, collect, or receive, directly or indirectly, 219
credit insurance premiums, charges for any ancillary product 220
sold, or any additional fees, interest, or charges in connection 221
with a loan, other than fees and charges permitted by section 222

1321.40 of the Revised Code ~~and costs or disbursements to which~~ 223
~~the licensee may become entitled to by law in connection with~~ 224
~~any civil action to collect a loan after default;~~ 225

(D) Collect treble damages pursuant to division (A) (1) (b) 226
(ii) of section 2307.61 of the Revised Code in connection with 227
any civil action to collect a loan after a default due to a 228
check, negotiable order of withdrawal, share draft, or other 229
negotiable instrument that was returned or dishonored for 230
insufficient funds; 231

(E) Make ~~Except as otherwise provided in section 1321.401~~ 232
of the Revised Code, make a short-term loan to a borrower if 233
there exists an outstanding loan between ~~the licensee and that~~ 234
~~borrower, if a loan between any licensee and that borrower was~~ 235
~~terminated on the same business day, if the borrower has more~~ 236
~~than one outstanding loan, if the loan would obligate the~~ 237
~~borrower to repay a total amount of more than five hundred~~ 238
~~dollars to licensees, or indebt the borrower, to licensees, for~~ 239
~~an amount that is more than twenty five per cent of the~~ 240
~~borrowers gross monthly salary not including bonus, overtime, or~~ 241
~~other such compensation, based on a payroll verification~~ 242
~~statement presented by the borrower;~~ and any of the following: 243

(1) The licensee; 244

(2) A person related to the licensee by common ownership 245
or control; 246

(3) A person in whom the licensee has any financial 247
interest of ten per cent or more; 248

(4) Any employee or agent of the licensee. 249

(F) Bring or threaten to bring an action or complaint 250
against the borrower for the borrower's failure to comply with 251

the terms of the loan contract solely due to the check, 252
negotiable order of withdrawal, share draft, or negotiable 253
instrument being returned or dishonored for insufficient funds. 254
Nothing herein prohibits such conduct, action, or complaint if 255
the borrower has intentionally engaged in fraud by, including 256
but not limited to, closing or using any closed or false account 257
to evade payment; 258

~~(G) Make a short term loan to a borrower for purposes of 259
retiring an existing short term loan between any licensee and 260
that borrower;~~ 261

~~(H) Require the borrower to waive the borrower's right to 262
legal recourse under any otherwise applicable provision of state 263
or federal law;~~ 264

~~(I) (H) Accept the title or registration of a vehicle, 265
real property, physical assets, or other collateral as security 266
for the obligation;~~ 267

~~(J) (I) Engage in any device or subterfuge to evade the 268
requirements of sections 1321.35 to 1321.48 of the Revised Code 269
including assisting a borrower to obtain a loan on terms that 270
would be prohibited by sections 1321.35 to 1321.48 of the 271
Revised Code, making loans disguised as personal property sales 272
and leaseback transactions, or disguising loan proceeds as cash 273
rebates for the pretextual installment sale of goods or 274
services;~~ 275

~~(K) (J) Assess or charge a borrower a fee for prepaying 276
the loan in full prior to the maturity date;~~ 277

~~(L) (K) Fail to comply with section 1321.45 of the Revised 278
Code;~~ 279

~~(M) (L) Recommend to a borrower that the borrower obtain a 280~~

loan for a dollar amount that is higher than the borrower has requested;	281 282
(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;	283 284 285 286
(O) <u>(M)</u> 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.	287 288 289 290 291 292
(P) <u>(N)</u> Make, publish, or otherwise disseminate, directly or indirectly, any misleading or false advertisement, or engage in any other deceptive trade practice;	293 294 295
(Q) <u>(O)</u> 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; i	296 297 298 299
(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.	300 301 302
(S) <u>(P)</u> 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; i	303 304 305 306 307
(T) <u>(Q)</u> Change the check number, or in any other way alter a check, negotiable order of withdrawal, or share draft, prior	308 309

to submitting such check, negotiable order of withdrawal, or 310
share draft for processing through the automated clearing house 311
system, or submit false information about any check, negotiable 312
order of withdrawal, or share draft to the automated clearing 313
house system; 314

(R) Make a loan to a borrower that includes a demand 315
feature that permits the licensee, in the event the borrower 316
fails to meet the repayment terms for any outstanding balance, 317
to terminate the loan in advance of the original maturity date 318
and to demand repayment of the entire outstanding balance, 319
unless both of the following requirements are met: 320

(1) Not earlier than ten days after the borrower's payment 321
was due, the licensee provides written notice to the borrower of 322
the termination of the loan. 323

(2) In addition to the outstanding balance, the licensee 324
collects only prorated interest and the fees earned up to the 325
termination of the loan. For purposes of division (R) (2) of this 326
section, the outstanding balance and prorated interest and fees 327
shall be calculated as if the borrower had voluntarily prepaid 328
the loan in full on the date of termination. 329

Sec. 1321.411. A licensee shall not attempt to collect 330
from a borrower's account after two consecutive attempts have 331
failed, unless the licensee obtains new written authorization 332
from the borrower to electronically transfer or withdraw funds 333
from the borrower's account. 334

Sec. 1321.422. (A) Every licensee shall keep and use in 335
the licensee's business such books, accounts, records, and loan 336
documents as will enable the division of financial institutions 337
to determine whether the licensee is complying with sections 338

1321.35 to 1321.48 of the Revised Code and with the orders and 339
rules made by the division under those sections. Such books, 340
accounts, records, and loan documents shall be segregated from 341
those pertaining to transactions that are not subject to 342
sections 1321.35 to 1321.48 of the Revised Code. Every licensee 343
shall preserve the books, accounts, records, and loan documents 344
pertaining to loans made under sections 1321.35 to 1321.48 of 345
the Revised Code for at least two years after making the final 346
entry on, or final revision of any loan document relative to, 347
any loan recorded therein. Accounting systems maintained in 348
whole or in part by mechanical or electronic data processing 349
methods that provide information equivalent to that otherwise 350
required are acceptable for this purpose. 351

(B) (1) As required by the superintendent of financial 352
institutions, each licensee shall file with the division each 353
year a report under oath or affirmation, on forms supplied by 354
the division, concerning the business and operation for the 355
preceding calendar year. If a licensee has more than one place 356
of business in this state, the licensee shall furnish a report 357
for each location. 358

(2) The division shall publish annually and make available 359
to the public an analysis of the information required under 360
division (B) (1) of this section, but the individual reports 361
shall not be public records and shall not be open to public 362
inspection. The published analysis shall include all of the 363
following: 364

(a) The total number of borrowers, loans, defaulted loans, 365
and charged-off loans and the total dollar value of the charged- 366
off loans; 367

(b) The average loan size, average contracted and average 368

experienced annual percentage rate, average charges per loan, 369
total contracted loan charges, and total loan charges actually 370
paid; 371

(c) The total number of check collection charges and the 372
total dollar value of those charges; 373

(d) The total number of licensee business locations and 374
the average number of borrowers per location; 375

(e) Any other nonprivate information determined by the 376
superintendent. 377

Sec. 1321.46. (A) Before initiating a short-term loan 378
transaction with a borrower, a licensee shall make a reasonable 379
attempt to verify the borrower's income for purposes of division 380
(C) of section 1321.39 of the Revised Code. At a minimum, the 381
licensee shall obtain from the borrower one or more recent pay 382
stubs or other written evidence of recurring income, such as a 383
bank statement. The written evidence shall include at least one 384
document that, when presented to the licensee, is dated not 385
earlier than forty-five days prior to the borrower's initiation 386
of the short-term loan transaction. If the borrower intends to 387
provide a bank statement, the licensee shall permit the borrower 388
to delete from the statement the information regarding to whom 389
the debits listed on the statement are payable. 390

(B) The superintendent of financial institutions may adopt 391
rules under section 1321.43 of the Revised Code that set forth 392
any other procedures the superintendent considers necessary to 393
ensure accurate verification of borrower income. 394

Sec. 1321.595. (A) A registrant shall not make a loan 395
under sections 1321.51 to 1321.60 of the Revised Code that has a 396
duration of less than one hundred eighty days. 397

(B) A registrant shall not engage in any act or practice 398
to evade the requirement of division (A) of this section, 399
including by contracting with a borrower to make a loan on terms 400
that would be prohibited by that division. 401

(C) No registrant shall fail to comply with this section. 402

Sec. 1321.99. (A) Whoever violates section 1321.02 of the 403
Revised Code is guilty of a felony of the fifth degree. 404

(B) Whoever violates section 1321.13 of the Revised Code 405
shall be fined not less than one hundred nor more than five 406
hundred dollars or imprisoned not more than six months, or both. 407

(C) Whoever violates section 1321.14 of the Revised Code 408
shall be fined not less than fifty nor more than two hundred 409
dollars for a first offense; for a second offense such person 410
shall be fined not less than two hundred nor more than five 411
hundred dollars and imprisoned for not more than six months. 412

(D) Whoever willfully violates section 1321.57, 1321.58, 413
division (A), (B), (C), or (D) of section 1321.59, 1321.591, or 414
1321.60 of the Revised Code is guilty of a minor misdemeanor and 415
shall be fined not less than one nor more than five hundred 416
dollars. 417

(E) Whoever violates section 1321.52 or division (I), (J), 418
(K), (L), or (M) of section 1321.59 of the Revised Code is 419
guilty of a felony of the fifth degree. 420

(F) Whoever violates division (A) of section 1321.73 of 421
the Revised Code shall be fined not more than five hundred 422
dollars or imprisoned not more than six months, or both. 423

(G) Whoever violates section 1321.41 of the Revised Code 424
is guilty of a misdemeanor of the first degree. 425

(H) Whoever violates division (N) of section 1321.59 of the Revised Code is guilty of a felony of the fourth degree.

(I) Whoever violates section 1321.141 or 1321.595 of the Revised Code is guilty of a minor misdemeanor and shall be fined not less than one nor more than five hundred dollars.

(J) The offenses established under sections 1321.141, 1321.41, and 1321.595 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.

(K) 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 broker an extension of credit for a buyer that meets any of the following conditions:

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

(B) The repayment term is shorter than one hundred eighty days.

(C) The annual percentage rate exceeds twenty-eight per cent. For purposes of this division, "annual percentage rate" has the same meaning as in section 1321.35 of the Revised Code.

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 454
4712.07 or 4712.08, or division (A) of section 4712.09 of the 455
Revised Code is guilty of a felony of the fifth degree. 456

(B) (1) Whoever violates section 4712.071 of the Revised 457
Code is guilty of a minor misdemeanor and shall be fined not 458
less than one nor more than five hundred dollars. 459

(2) The offense established under section 4712.071 of the 460
Revised Code is a strict liability offense and section 2901.20 461
of the Revised Code does not apply. The designation of this 462
offense as a strict liability offense shall not be construed to 463
imply that any other offense for which there is no specified 464
degree of culpability, whether in this section or another 465
section of the Revised Code, is not a strict liability offense. 466

Section 2. That existing sections 1321.35, 1321.36, 467
1321.39, 1321.40, 1321.41, 1321.422, 1321.99, and 4712.99 and 468
sections 1321.46 and 1321.461 of the Revised Code are hereby 469
repealed. 470

Section 3. (A) Subject to division (B) of this section, 471
Sections 1 and 2 of this act apply only to loans that are made, 472
or extensions of credit that are obtained, on or after the date 473
that is ninety days after the effective date of this act. 474

(B) The Superintendent of Financial Institutions may delay 475
the application of Sections 1 and 2 of this act for up to an 476
additional ninety days, if the Superintendent determines the 477
delay is necessary to ensure full compliance with the act. 478