

ORIGINAL

IN THE SUPREME COURT OF OHIO

OHIO NEIGHBORHOOD FINANCE, INC.,	:	
	:	Case No. 2013-0103
Plaintiff-Appellant,	:	
	:	Appeal from the Ninth Judicial
vs.	:	District Court of Appeals
	:	Case No. 11CA010030
RODNEY SCOTT,	:	
	:	
Defendant-Appellee.	:	

**MERIT BRIEF OF PLAINTIFF-APPELLANT
OHIO NEIGHBORHOOD FINANCE, INC.**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	v
INTRODUCTION.....	1
STATEMENT OF FACTS.....	2
I. Appellee Scott Defaults On His Loan Agreement With Cashland, The Form Of Which Was Approved By The Department Under The Mortgage Loan Act (“MLA”).....	2
II. A Split Court Of Appeals Concludes The MLA Does Not Authorize The Loan Agreement	4
ARGUMENT.....	5
I. History Of Single Installment Lending In Ohio	6
A. Prior To The Enactment Of The Short Term Loan Act (“STLA”), The MLA Was One Of The Three Alternative Licensing Statutes Allowing Single Installment Loans Of Short Duration.....	6
B. H.B. 545 Repealed Only One Of The Three Alternatives For Single Installment Loans Of Short Duration.....	8
C. The General Assembly Rejected Proposed Statutory Language That Would Have Prohibited Short-Term Loans Under The MLA.....	10
D. The Department Of Commerce Continues Its Longstanding Policy Of Permitting Single Installment Loans Under The MLA.....	13
E. The Attorney General Confirms The Department’s Position That The STLA Is <i>Not</i> The Exclusive Authority For Single Installment Loans Of Short Duration.....	15
<u>Proposition of Law No. I:</u> The plain and unambiguous language of Sections 1321.51(F) and 1321.57 of the Ohio Mortgage Loan Act permits MLA registrants to make single installment, interest-bearing loans.....	16
A. The Plain Language Of The MLA Permits Interest-Bearing Loans Without Requiring A Minimum Number Of Payments.....	16

B.	The Court Of Appeals Misread The MLA’s Plain Language By Ignoring Basic Rules Of Grammar	18
C.	The Court Should Defer To The Department’s Longstanding Allowance Of Single Installment MLA Loans	21
D.	Ohio’s Other Courts of Appeals Consistently Follow The MLA’s Plain Language And Enforce Single Installment Loans	22

<u>Proposition of Law No. II:</u> The Short Term Loan Act, R.C. 1321.35 to R.C. 1321.48, does not prohibit MLA registrants from making single installment loans of short duration permitted by the express terms of the MLA, R.C. 1321.57	24
---	----

A.	The STLA Does Not Prohibit A MLA Registrant From Making A Two-Week, Single Installment Loan Under The MLA	24
B.	H.B. 545 Confirms The STLA Was <i>Not</i> Intended To Be The Exclusive Lending Authority for Short Term Lending	25
C.	Since The Enactment Of The STLA, The General Assembly Has Left Undisturbed The Department’s Allowance Of Single Installment MLA Loans	27
D.	The MLA Controls Over The STLA Because The MLA Applies “Notwithstanding Any Other Provisions Of The Revised Code”	29
E.	Any Changes In The Law Should Be Made By The General Assembly, Not The Courts	31

CONCLUSION	33
------------------	----

CERTIFICATE OF SERVICE	34
------------------------------	----

APPENDIX

Appx. Page

Notice of Appeal to the Supreme Court of Ohio (Jan. 17, 2013)	A-1
--	-----

Decision and Journal Entry of the Ninth District Court of Appeals (Filed Dec. 5, 2012).....	A-4
Judgment Entry of the Elyria Municipal Court (June 15, 2011).....	A-16
Memorandum of Opinion of the Elyria Municipal Court (June 15, 2011).....	A-17
Decision and Recommendation of the Magistrate of the Elyria Municipal Court (March 25, 2011).....	A-21
R.C. 1321.51.....	A-37
R.C. 1321.57.....	A-43
R.C. 1321.35.....	A-49
R.C. 1321.36.....	A-50
R.C. 1321.39.....	A-51
Excerpts of 1979 Am.H.B. 511	A-53
Excerpts of 2008 Am.Sub.H.B. 545	A-57
Excerpts of Proposed 2009 H.B. 209	A-62

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page</u>
<i>Adams v. Ohio Neighborhood Finance, Inc.</i> , U.S. District Court, S.D. Ohio, Western Division, Case No. 1:12-cv-947	32
<i>Anderson v. Barclay's Capital Real Estate, Inc.</i> , Slip Opinion No. 2013-Ohio-1933	28
<i>BedRoc Ltd., LLC v. United States</i> , 124 S. Ct. 1587 (2004)	16
<i>CBS, Inc. v. Federal Communications Comm'n</i> , 453 U.S. 367 (1981).....	28
<i>Cisneros v. Alpine Ridge Group</i> , 508 U.S. 10 (1993)	29
<i>Gary Comer, Inc. v. Wallace</i> , 2001 WL 1173498 (N.D. Ill. 2001).....	20
<i>Hedges v. Nationwide Mutual Ins. Co.</i> , 109 Ohio St.3d 70, 2006-Ohio-1926.....	19
<i>Highlands Ind. Bank v. Pages-Morales</i> , 2012 WL 1802364 (S.D. Fla. 2012).....	20
<i>In re Eubanks</i> , 219 B.R. 468 (6th Cir. BAP 1998).....	30
<i>In re Staley</i> , 2000 WL 33709684 (Bankr. D.S.C. 2000)	20
<i>Indep. Ins. Agents of Ohio, Inc. v. Fabe</i> , 63 Ohio St.3d 310 (1992).....	19
<i>Investors REIT One v. Jacobs</i> , 46 Ohio St.3d 176 (1989).....	7
<i>Maitland v. Ford Motor Co.</i> , 103 Ohio St.3d 463, 2004-Ohio-5717	22, 25, 27
<i>Maloof v. C.I.R.</i> , 456 F.3d 645 (6th Cir. 2006)	20
<i>Ogden v. Blackledge</i> , 6 U.S. (2 Cranch) 272 (1804)	1
<i>Ohio Neighborhood Finance, Inc. v. Adkins</i> , 7th Dist., 2010-Ohio-3164.....	23
<i>Ohio Neighborhood Finance, Inc. v. Brothers</i> , 2d Dist., 2010-Ohio-5746.....	22
<i>Ohio Neighborhood Finance, Inc. v. Christie</i> , 8th Dist. No. 94821, 2010-Ohio-5017.....	23
<i>Ohio Neighborhood Finance, Inc. v. Dotson</i> , 4th Dist., 2010-Ohio-3366	22
<i>Ohio Neighborhood Finance, Inc. v. Douglas</i> , 2d Dist., 191 Ohio App.3d 322, 2010-Ohio-6092.....	22
<i>Ohio Neighborhood Finance, Inc. v. Evert</i> , 5th Dist., 2010-Ohio-797	23

<i>Ohio Neighborhood Finance, Inc. v. Farley</i> , 2d Dist., 2010-Ohio-6097	22
<i>Ohio Neighborhood Finance, Inc. v. Header</i> , 2d Dist., 2010-Ohio-6095	22
<i>Ohio Neighborhood Finance, Inc. v. Leggett</i> , Case No. CV-12-796412, Cuyahoga County Common Pleas Court.....	32
<i>Ohio Neighborhood Finance, Inc. v. Marsh</i> , 7th Dist., 2010-Ohio-3163	23
<i>Ohio Neighborhood Finance, Inc. v. Massey</i> , 10th Dist., 2011-Ohio-2165.....	23
<i>Ohio Neighborhood Finance, Inc. v. Powell</i> , 6th Dist., 2010-Ohio-1706.....	23
<i>Ohio Neighborhood Finance, Inc. v. Wilkinson</i> , 5th Dist. 2010-Ohio-796.....	23
<i>Prudential Ins. Co. of Am. v. City of Boston</i> , 479 B.R. 210 (1st Cir. 2012).....	20
<i>Sears v. Weimer</i> , 143 Ohio St. 312 (1944).....	31
<i>Slingluff v. Weaver</i> , 66 Ohio St. 621 (1902).....	17
<i>Smith v. Town North Bank</i> , 2012 WL 5499406 (Tex. App. 2012).....	20
<i>State ex rel. Carmean v. Board of Educ. of Hardin County</i> , 170 Ohio St. 415 (1960).....	30
<i>State ex rel. Celebrezze v. Board of County Comm’rs of Allen County</i> , 32 Ohio St.3d 24 (1987).....	16, 31
<i>State ex rel. Lee v. Karnes</i> , 103 Ohio St.3d 559, 2004-Ohio-5718	16
<i>State ex rel. McLean v. Industrial Comm’n of Ohio</i> , 25 Ohio St.3d 90 (1986).....	22
<i>State ex rel. Ohio Academy of Trial Lawyers v. Sheward</i> , 86 Ohio St.3d 451 (1999).....	31
<i>State v. Krutz</i> , 28 Ohio St.3d 36 (1986).....	19
<i>Stepping Stone Homes, Inc. v. Wisconsin Public Service Corp.</i> , 2011 WL 3300200 (Wis. App. 2011)	20
<i>Swallow v. Industrial Comm’n of Ohio</i> , 36 Ohio St.3d 55 (1988)	22
<i>Talbott v. State ex rel. Houston</i> , 5 Ohio App. 262 (1916).....	30
<i>Tomasik v. Tomasik</i> , 111 Ohio St.3d 481, 2006-Ohio-6109	16, 24
<i>Weaver v. State</i> , 120 Ohio St. 44 (1929)	1, 31

STATUTES AND LEGISLATIVE BILLS

R.C. 1321.019, 26

R.C. 1321.136, 9, 26

R.C. 1321.351, 15, 24

R.C. 1321.3624

R.C. 1321.3924

R.C. 1321.4010, 27

R.C. 1321.511, 6, 9, 16, 17, 18, 19, 20, 21, 22, 26

R.C. 1321.526

R.C. 1321.532

R.C. 1321.546

R.C. 1321.556

R.C. 1321.572, 3, 7, 9, 10, 16, 17, 24, 29, 30

R.C. 1321.5713, 17

1979 Am.H.B. 511, 138 Ohio Laws, Part II, 29387

2008 Am.Sub.H.B. 5452, 8, 9, 10, 11, 12, 15, 25, 26, 27, 32

Proposed 2009 H.B. 20912, 28, 31, 32

OTHER AUTHORITIES

2008 Ohio Atty.Gen.Ops. No. 2008-03615, 25

INTRODUCTION

“Whatever the reasons of the Legislature in passing the act may have been, ours is a government of laws, and courts must take the law as they find it; and, if a change is to be made, the same must be made by the Legislature and not by the courts.”

[*Weaver v. State*, 120 Ohio St. 44, 46 (1929)
(emphasis added), citing *Ogden v. Blackledge*, 6 U.S.
(2 Cranch) 272, 277 (1804)]

But here, the Ninth District Court of Appeals, in a split decision, “interpreted” the plain and unambiguous language of the Ohio Mortgage Loan Act (“MLA”), R.C. 1321.51-.60, to outlaw all MLA loans that are to be repaid in full in a single payment (“a single installment loan”), thereby threatening to eradicate short-term consumer lending in Ohio. It did so by construing the standard definition of an “interest-bearing loan” under R.C. 1321.51(F) in a manner that violates common sense, basic rules of grammar, and this Court’s precedent – making Ohio an aberrational outlier in the world of finance. And, in doing so, the court of appeals’ decision not only usurps the function of the General Assembly, it strikes down the interpretation of the Ohio Department of Commerce (“Department”) that has controlled lending for the entire MLA industry in Ohio for more than thirty years.

The Ninth District’s error in misreading the MLA’s plain language defining “interest bearing loans” opened the door for the court to conclude that an entirely separate lending statute, Ohio’s Short Term Loan Act (“STLA”), R.C. 1321.35-.48, was “intended” by the General Assembly to “proscribe” any single installment loans issued by MLA registered lenders like the one here – a loan “to be repaid in full in two weeks.” But the court below cited not a word from the STLA to support its claim that it was intended to preempt lending under the long-existing MLA – because that language simply does not exist. The General Assembly knew how to make

the STLA the exclusive lending authority for all loans of short duration. But it didn't do so. The dissenting opinion below got it exactly right:

“[N]othing in the Short-Term Lender Act prohibits a loan under the Mortgage Loan Act that satisfies the requirements of the Mortgage Loan Act.”

[Appx. A-14, Decision ¶ 24 (Dickinson, J., dissenting)]

The legislative history of the very bill that enacted the STLA, 2008 Am. Sub. H.B. 545 (“H.B. 545”), makes it clear that the General Assembly did *not* intend to make the STLA the exclusive lending authority for all single installment loans of short duration. During its consideration of H.B. 545 and then again shortly after its passage, the General Assembly was presented with proposed amendments that would have precluded all short-term or single installment loans under the MLA. On both occasions, the General Assembly rejected the proposed amendments.

But here, the court of appeals’ decision below mentions not a word about H.B. 545’s legislative history and the General Assembly’s rejection of the very same amendments to the MLA that the court of appeals judicially adopted through its unfounded “interpretation” of the MLA’s standard definition of “interest bearing loans.”

STATEMENT OF FACTS

I. Appellee Scott Defaults On His Loan Agreement With Cashland, The Form Of Which Was Approved By The Department Under The MLA

It is undisputed that Appellant Ohio Neighborhood Finance, Inc. dba Cashland (“Cashland”) is a MLA registrant pursuant to R.C. 1321.53. [Tr. at 83] As such, it is authorized to make loans consistent with the provisions of the MLA. R.C. 1321.57. Cashland has never sought registration, nor proposed to do business, under the STLA. And even though the Department has conducted **over 150 on-site examinations** of Cashland’s Ohio branch offices

since 2008, the Department has never asserted that the STLA applies to any of Cashland's MLA loans.

On December 5, 2008, Rodney Scott entered into a Customer Agreement with Cashland for a \$500 loan due two weeks later on December 19, 2008. [Supp. at 1, 9-10; Tr. at 24-25] The loan agreement is identical in all material respects to Cashland's sample loan agreement that the Department reviewed and approved earlier that same year. The loan agreement specifically stated that it is "governed by the laws of the State of Ohio, including the Mortgage Loan Act, Ohio Revised Code Section 1321.51 to 1321.60." [Supp. at 2]

The interest and fees that Scott agreed to pay for the loan are straightforward, expressly permitted by the MLA, and standard in many types of loans:

- Interest of 25% per annum as expressly allowed by R.C. 1321.571. [Supp. at 1] Thus, Scott would owe \$5.16 of interest on December 19, 2008 if he did not prepay before the due date.¹
- A \$10 credit investigation fee, which was added to the principal amount owed by Scott as permitted by R.C. 1321.57(H)(1)(c). [Supp. at 1, 15; Tr. at 48]
- A \$30 loan origination fee as permitted by R.C. 1321.57(J)(1)(b). [Supp. at 1]

Significantly, the loan agreement expressly permitted Scott to prepay the loan in whole or part "at any time" without penalty. The agreement also explained that if Scott prepaid, less interest would accrue and thus Scott would owe less than \$5.16 of interest. The "Prepayment/Cancellation" section of the loan agreement states:

You may prepay your obligations under this Customer Agreement in any amount at any time and you will not incur an additional charge, fee or penalty. Partial or full prepayment of

¹ "Interest" under R.C. 1321.51(E) does *not* include "loan origination charges" or "other fees and charges specifically authorized by law."

the Principal Amount of this loan will reduce the amount of interest that will accrue. [Supp. at 1]

Cashland also provided Scott with its standard Extended Payment Plan option. Under this plan, if a customer informs Cashland that he or she is not able to repay the loan when it becomes due, Cashland extends the due date by four months and permits the customer to repay the amount owed in four monthly installments – without charging any extra interest or fees. [Tr. at 32-33, 35] Scott's loan agreement states:

EXTENDED PAYMENT PLAN. Not more than once in any twelve (12) month period, you may opt into an extended payment plan ("EPP") if you are unable to repay your loan when due.... You must opt into the EPP by the close of business on the Payment Date.

[Supp. at 2]

But Scott chose not to opt into the Extended Payment Plan. Instead, he defaulted on the loan agreement by letting the December 19, 2008 due date come and go without contacting Cashland or making a payment. [Supp. at 11; Tr. at 26] Several months later, Scott made two payments to Cashland totaling \$35. [Supp. at 7-8; Tr. at 11-12] It is undisputed he failed to make any further payments.

II. A Split Court Of Appeals Concludes The MLA Does Not Authorize The Loan Agreement

After Cashland made unsuccessful efforts to collect Scott's unpaid loan, it filed a complaint against Scott in the Elyria Municipal Court in Lorain County, Ohio on May 28, 2009 – five months after Scott's default. Scott never appeared or filed a responsive pleading in the lawsuit. On August 25, 2009, Cashland filed a motion for default judgment, seeking recovery of the unpaid principal balance and the fees and interest permitted by the MLA.

Despite Scott's failure to appear and the lack of any opposition to Cashland's claim, a magistrate of the Elyria Municipal Court took the unprecedented step of holding an evidentiary

hearing on April 1, 2010 in which he took an active role cross-examining Cashland's witness about Cashland's general business practices. On March 25, 2011, the magistrate issued a decision, recommending that Cashland be granted judgment of only \$465 plus 8% interest without any recovery for MLA fees. In doing so, the magistrate ruled that Scott's loan was not permitted by the MLA and that the STLA prohibited the fees and interest Scott had agreed to pay. The Elyria Municipal Court subsequently adopted the magistrate's decision without change.

On December 3, 2012, the Ninth District Court of Appeals issued a split decision affirming the trial court's judgment. The court of appeals is the first appellate court in this State to hold that the MLA does not permit single installment loans. It did so by misconstruing the standard definition of an "interest-bearing loan" under R.C. 1321.51(F) in a manner that violates basic rules of grammar adopted by this Court and reverses thirty year's of MLA interpretation and enforcement by the Department. The court of appeal's misreading of MLA's plain definition of "interest bearing loan" led the court to compound its error by then reading the MLA "*in pari materia*" with the STLA. The Ninth District concluded that the STLA was "intended" by the General Assembly to "proscribe" any single installment loans under the MLA. But neither the STLA's language nor its legislative history supports this conclusion.

ARGUMENT

The error in the Ninth District's decision arises from a fundamental lack of understanding that Ohio has **three separate and alternative statutory provisions under which lenders can be licensed to make unsecured loans**. Contrary to the unsupported assumption underlying the decision below, it is clear that the General Assembly's intent in adopting the STLA was to replace one, but only one, of the three with a new alternative, the STLA. Given the importance

of understanding these alternative lender licensing statutes and how the enactment of the STLA fits into Ohio's overall regulatory picture, we start with a short history of single installment lending in Ohio.

I. History Of Single Installment Lending In Ohio

A. Prior To The Enactment Of The STLA, The MLA Was One Of The Three Alternative Licensing Statutes Allowing Single Installment Loans Of Short Duration

Prior to the adoption of the STLA in 2008, non-bank lenders in Ohio had three options for making short-term, single installment loans: (1) the MLA, R.C. 1321.51 to 1321.60, which permits "interest bearing" loans without requiring a minimum term or number of installments; (2) the Small Loan Act, R.C. 1321.01 to 1321.19, which has the same language as the MLA in allowing "interest bearing" loans, R.C. 1321.13; and (3) the Check-Cashing Lender Act, former R.C. 1315.35 to R.C. 1315.44.

The MLA has been Ohio's fundamental lending law for non-bank lenders since at least 1981 when the MLA was expanded to permit not only its name-sake mortgage loans, but also general unsecured loans. *See* 1981 H.B. 134 (amending R.C. 1321.52(C) to permit a registrant to "make unsecured loans"). The scope of the MLA expanded, but the name of the statute simply didn't change. A review of the more than 1400 entities holding MLA certificates of registration illustrates the broad diversity of MLA lenders.² MLA registrants include auto lenders, finance companies making unsecured loans, rent-to-own companies, pawnshops, and even grocery stores and construction companies. Each is regulated by the Department, which is vested by the General Assembly with authority to license applicants under, and assure their regulatory compliance with, the MLA. R.C. §§ 1321.53, 1321.54, and 1321.55.

² A list of the entities holding MLA certificates of registration may be found at: <https://elicense2-secure.com.ohio.gov/Lookup/LicenseLookup.aspx>.

MLA registrants have been making single installment loans with the blessing of the Department and under its close supervision since 1979. That's when the General Assembly enacted Amended H.B. 511, which amended the MLA to allow MLA registrants to make "interest-bearing" loans (in addition to precomputed loans). **Importantly, when the General Assembly did so, it deleted the then-existing requirement (under the prior R.C. 1321.57(A)) that a loan must be "repayable in substantially equal installments...."** 1979 Am. H.B. 511, Section 1, 138 Ohio Laws, Part II, 2938, 2942 (emphasis added). [Appx. A-54] The 1979 amendment eliminated the requirement of repayment in multiple installments for "interest-bearing" loans and imposed no limitation on the number or timing of installments in the new statutory definition of "interest-bearing loans." The amended R.C. 1321.57(C) simply stated: "With respect to interest-bearing loans: (1) interest shall be computed on unpaid principal balances outstanding from time to time, for the actual time outstanding."³ [Appx. A-54]

Ever since H.B. 511 was passed in 1979, the Department has read the MLA to permit single installment, interest-bearing loans. In fact, the Department has historically approved many different single installment lending programs under the MLA:

- Tax refund loans, repayable in one installment when the tax refund is received.
- Agricultural loans to farmers to purchase supplies and seed, repayable in one installment due after crops are harvested.
- Reverse mortgages that are paid in a single installment usually upon the death of the debtor.

³ In contrast to interest-bearing loans, H.B. 511's amended R.C. 1321.57(D)(1) specifically required that "**precomputed loans ... shall be repayable in substantially equal and consecutive monthly installments** of principal and interest combined." [Appx. A-54 (emphasis added)] Under the Latin phrase, *expression unius est exclusion alterius*, the General Assembly's express inclusion of a requirement of equal monthly installments **only** for precomputed loans "argues strongly that it was not the legislature's intent" to apply that requirement to interest-bearing loans. *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 181 (1989).

- Tradesmen loans for funds to purchase materials for a project, repayable in one installment due after the project is completed and the customer has paid the tradesman.
- Certificate of deposit loans made to persons who have immediate cash needs but whose funds are tied up in a CD with a penalty for early withdrawal. These loans are repayable in one installment due when the CD matures.
- Investment loans made to individuals for making business and other investments. These loans are repayable in one installment when the individual expects to receive a return on the investment.

When the third statute authorizing single installment loans, the Check-Cashing Lender Act, was adopted in 1995, most (if not all) lenders of short-term consumer loans naturally elected to become licensed under, and began making loans pursuant to, the Check-Cashing Lender Act because it permitted significantly more generous fees and interest than either the MLA or the Small Loan Act allowed. The MLA and Small Loan Act, however, continued to provide alternative statutory authorization for their registrants to make single installment loans of short duration if a lender chose to be licensed and regulated thereunder.

B. H.B. 545 Repealed Only One Of The Three Alternatives For Single Installment Loans Of Short Duration

In 2008, the General Assembly changed the three-part alternative licensing authority for single installment loans when it enacted the STLA. The legislation implementing this change, H.B. 545, repealed only **one** of the three preexisting alternatives that provided lending authority to make single installment loans of short duration – the Check-Cashing Lender Act, which permitted significantly higher fees and interest compared to the other two. *See* Section 3 of H.B. 545. [Appx. A-58] H.B. 545 replaced that alternative with the STLA. *See* Section 1 of H.B. 545.

But importantly, H.B. 545 did not eliminate or otherwise limit the two other alternatives for single installment loans of short duration: the MLA or the Small Loan Act. Contrary to the Ninth District's assumption in this case, **H.B. 545 expressly acknowledges the continuing availability of licensing for short-term, single installment lenders under statutes other than the STLA**. It does so in Section 4(B), which expressly provides a license fee discount to lenders who wish to continue short-term lending under one of the two remaining alternative lending statutes (the Small Loan Act):

If any person licensed under sections 1315.35 to 1315.44 of the Revised Code [the Check-Cashing Lender Law] on the effective date of this section **applies for a license to operate under sections 1321.01 to 1321.19 of the Revised Code [the Small Loan Act]** for the 2008 licensing period ending June 30, 2009, that person shall pay only one-half of the license fee provided for under section 1321.03 of the Revised Code.

[Appx. A-59, H.B. 545, Section 4(B) (emphasis added)]

H.B. 545's express recognition of the Small Loan Act as an alternative lending authority to the STLA for short-term loans totally undermines the fundamental assumption as to the General Assembly's intent, upon which the court below based its decision. Indeed, it is dispositive in the instant action because Section 4 unequivocally allows short-term, single installment lending under the provisions of the Small Loan Act, **which are identical to the MLA's provisions at issue in this case**. Just like the MLA's R.C. 1321.57(A), R.C. 1321.13(A) of the Small Loan Act states: "Loans may be interest-bearing or precomputed." Just like the definition of "interest-bearing loan" in R.C. 1321.51(F) of the MLA, R.C. 1321.01(A)(6) of the Small Loan Act defines "interest-bearing loan" as "a loan in which the debt is expressed as the principal amount and interest is computed, charged and collected on unpaid principal balances outstanding from time to time." And like the MLA, the Small Loan Act has no

minimum limit on loan duration or the number of installments. There is simply no substantive difference between the pertinent provisions of the Small Loan Act and the MLA that permit single installment loans of short duration.

Thus, after the enactment of H.B. 545, a lender has the option of obtaining a STLA license and charging an interest rate of 28% under R.C. 1321.40(A), without additional fees. Or, a lender may obtain a license and operate under either the Small Loan Act or the MLA. If the lender chooses to be licensed under the MLA, it must charge a lower interest rate than is authorized by the STLA, but it may also charge a \$10 credit investigation fee and an origination fee that are not permitted under the STLA. R.C. 1321.57(H)(1)(c), (J)(1). The choice among these three alternatives (MLA, STLA, or Small Loan Act) is the lender's; Ohio's statutes permit it to be licensed and make single installment loans of short duration under any of the three.

C. **The General Assembly Rejected Proposed Statutory Language That Would Have Prohibited Short-Term Loans Under The MLA**

The legislative history of H.B. 545 also confirms the error of the court of appeals as to the General Assembly's intent in passing the STLA. While H.B. 545 was being considered by the Senate, the Department notified state senators that if the STLA was enacted, lenders previously licensed under the Check-Cashing Lender Act would begin using the MLA and the Small Loan Act as alternative lending authorities. On May 8, 2008, the Department submitted language for consideration of the General Assembly that would amend the not-yet-adopted H.B. 545 to prohibit single installment loans under the MLA and the Small Loan Act of a duration less than three months -- thus eliminating short-term loans under either of those alternative statutes. The Department proposed amending R.C. 1321.59 of the MLA to include a new division (E):

Except where the annual percentage rate is 25% or less as calculated in accordance with the federal Truth in Lending Act (i) **no registrant shall make a loan under sections 1321.51 to 1321.60 of**

the Revised Code [the MLA] having a term of less than three months or a loan having less than three installments....⁴
(Emphasis added).

[Appx. A-1 to Amicus Brief of Richard Keck, Former Deputy Superintendent of Department's Division of Financial Institutions]

But despite the fact that legislators were told by the Department that lenders could (and would) use the MLA and Small Loan Act as alternative authority for making short-term, single installment loans, the General Assembly never adopted the Department's proposed language.

Indeed, public statements made by members of the General Assembly at the time of the adoption of H.B. 545 expressly recognized that the STLA was not intended to preempt short-term lending under other existing statutory schemes. On May 12, 2008, during consideration of the legislation by the Senate Committee on Finance and Financial Institutions, Senator John Carey (R-Wellston) stated: "We're looking at ways to encourage payday lenders to go under the Small Loan Act as it is in current law [and not just the STLA]. You can have origination fees under the Small Loan Act." [5/12/08 Gongwer Ohio Report] Two days later, when the Senate passed an amended version of H.B. 545 containing Section 4, Senate President Bill Harris (R-Ashland) publicly said he was hopeful that revisions the Senate Committee made to the bill would encourage lenders to offer cheaper loans under the existing Small Loan Act. [5/14/08 Gongwer Ohio Report]

In fact, the day H.B. 545 was signed into law, the sponsor of H.B. 545, Representative Chris Widener, was quoted in a June 2, 2008 Gongwer Ohio Report as encouraging payday lenders to consider their alternative options under existing law:

⁴ Adopting the federal Truth in Lending Act's ("TILA's") APR definition would have the effect of precluding fees under the MLA because, unlike the existing MLA, TILA includes all fees in the calculation of APR.

Our message to them [payday lenders] is try again. Try again, because there is an origination fee, there is interest, there are other sorts of things available under the Small Loan Act.... **When we took a look at it, it seemed to provide a pretty good framework for short-term-type lending.** (Emphasis added).

Having rejected the Department's proffered language amending H.B. 545 to eliminate short-term, single installment loans under the MLA and Small Loan Act when the STLA was adopted in 2008, the General Assembly once again, a year later, rejected amendments to the MLA that would have curtailed single installment MLA loans of short duration. On June 4, 2009, Rep. Matt Lundy (D-Elyria) sponsored H.B. 209, which was assigned to the House Financial Institutions, Real Estate & Securities Committee. [Appx. A-67] H.B. 209 sought to amend the MLA to curtail single installment loans and loans with a term of less than three months. Specifically, H.B. 209 sought to add the following language to R.C. 1321.59 of the MLA:

(E)(1) No registrant shall make a loan of one thousand dollars or less under sections 1321.51 to 1321.60 of the Revised Code that will obligate the borrower to pay an annual percentage rate for the loan that exceeds twenty-eight per cent, as calculated in compliance with the "Truth in Lending Act," 82 Stat. 149 (1980), 15 U.S.C. 1606, unless one of the following applies:

- (a) **The term of loan is greater than three months.**
- (b) **The loan contract requires the borrower to repay the loan in three or more monthly installments of substantially equal amounts.**

[Appx. A-64, H.B. 209 (emphasis added)]

But H.B. 209 died without being adopted; the General Assembly again chose not to outlaw short-term, single installment loans under the MLA. As such, the MLA continues as one of three statutory alternatives under which lenders in Ohio can be licensed to make single installment loans of short duration. In sum, nothing in the history of the enactment of the STLA

supports the Ninth District's unfounded assumption that the STLA was intended to prohibit MLA registrants from making short-term, single installment loans under the MLA.

D. The Department Of Commerce Continues Its Longstanding Policy Of Permitting Single Installment Loans Under The MLA

Since the adoption of the STLA in 2008, the Department – which is vested with responsibility for compliance and enforcement of the STLA – has continued to allow single installment MLA loans of short duration, just as it has for nearly three decades before the enactment of the STLA. In fact, the Department publicly reports that it has permitted hundreds of MLA registrants throughout Ohio to make literally tens of thousands of single installment loans to Ohioans under the MLA each year. The Department's own MLA Annual Report discloses that, in 2009 alone, over 1.6 million MLA loans – totaling \$743 million – were “repayable as single payment demand loan[s.]” See www.com.ohio.gov/fiin/docs%5Cfiin_AnnualReport2009.pdf. Ohioans' demand for this type of lending has not abated since 2009, so untold thousands of single installment MLA loans have been made under the Department's close oversight and with its regulatory blessing.

The Department's policy of permitting single installment MLA loans is reflected by the process Appellant Cashland had to undertake to become licensed as a MLA registrant. When Cashland applied for its MLA license in 2008, the Department required it to submit sample loan documents that Cashland proposed to use. The Department did so to assure that Cashland's proposed loan agreements “are in compliance with the Ohio Mortgage Loan Act” before registration is approved. See Department's MLA Registration Application Form at http://www.pdfFiller.com/16687454-fiin_SLApp-small-loan-main-office-application---Ohio-Department-of-Commerce--Various-Fillable-Formscom-ohio.

In response, Cashland submitted its sample Customer Agreement to the Department. Its sample loan agreement expressly provided for a single installment payment for an interest-bearing loan. It was identical to the loan agreement signed by Mr. Scott in all material respects:

Payment Schedule: **One payment** in the amount of \$ _____ due on _____ (Payment Date).

* * *

PROMISE TO PAY. You promise to pay us \$ _____ (the Principal Amount of this loan) plus interest at a rate of 25% per annum on the principal outstanding for the time outstanding from the date of this Customer Agreement until paid in full. Interest shall be computed daily upon the principal balance outstanding by using the simple interest method, assuming a 365-day year. (Emphasis added).

After reviewing Cashland's sample loan agreement, the Department approved Cashland's application and issued it a certificate of registration as a MLA lender. In doing so, the Department never suggested that the proposed loan agreement providing for a single installment was precluded under the MLA. To the contrary, its approval of Cashland's MLA registration was yet another acknowledgment that single installment loans are permitted under the MLA.

Since Cashland was granted MLA registration in 2008, the Department has conducted **over 150 on-site examinations** of Cashland's branch offices (including the office where Scott obtained his loan in Elyria) to ensure that its loans comply with the MLA. Not once has the Department ever challenged – or even commented on – the single payment feature of Cashland's MLA loans. Nor has the Department ever asserted that the STLA applies to Cashland's MLA loans. Rather, the Department has renewed Cashland's MLA license annually.

E. **The Attorney General Confirms The Department’s Position That The STLA Is Not The Exclusive Authority For Single Installment Loans Of Short Duration**

Shortly after the STLA was enacted in 2008, the Attorney General reviewed the provisions of the STLA. In her Opinion, the Attorney General agreed with the Department’s position that the STLA is *not* the exclusive authority for short-term loans:

[T]he fact that R.C. 1321.35 defines ‘[s]hort-term loan’ as ‘a loan made pursuant to R.C. 1321.35-48’ makes it clear that the [STLA] licensing applies only to lenders making loans under the Short-Term Loan Act, and not to all lenders of loans of short duration.

[2008 Ohio Atty.Gen.Ops. No. 2008-036, at *3]

The Attorney General also concluded that “[i]f a person has a valid license to make another type of loan” under a different statute, “that loan is not a short-term loan subject to the limitations” of the STLA. *Id.* at n.5 (emphasis added). The Attorney General relied on Section 4 of H.B. 545 – which provided short-term lenders with license fees discounts to operate under the Small Loan Act – in concluding that, even after the passage of the STLA, a lender can be licensed to make short-term loans under “more than one lending law.” *Id.* at *3 n.4. The Attorney General noted that this reading “is consistent with the position taken by the Department of Commerce’s Division of Financial Institutions.” *Id.* at *3.

Given the Attorney General’s recognition that the STLA does not preclude short-term, single installment loans under other alternative lender-licensing statutes and the history supporting her conclusion, we now turn to the law requiring reversal of the decision below.

Proposition of Law No. I: The plain and unambiguous language of Sections 1321.51(F) and 1321.57 of the Ohio Mortgage Loan Act permits MLA registrants to make single installment, interest-bearing loans.

A. The Plain Language Of The MLA Permits Interest-Bearing Loans Without Requiring A Minimum Number Of Payments

For the first time since the MLA was expanded in 1979 to generally permit interest-bearing loans, the Ninth District Court of Appeals has barred all single installment loans under the MLA by misconstruing R.C. 1321.51(F)'s unambiguous term, "interest-bearing" loan, which does not even speak to the number of installments for a MLA loan.

It is axiomatic that construction of a statute begins (and here, ends) with the statute's express language. The "preeminent cannon" of statutory construction "requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, ¶ 27 (emphasis added), quoting *BedRoc Ltd., LLC v. United States*, 124 S. Ct. 1587, 1593 (2004). *Accord: State ex rel. Celebrezze v. Board of County Comm'rs of Allen County*, 32 Ohio St.3d 24, 27-28 (1987) ("it is a cardinal rule of construction that where a statute is clear and unambiguous, there is no occasion to resort to the other means of interpretation.... An unambiguous statute is to be applied, not interpreted"). This Court, in *Tomasik v. Tomasik*, 111 Ohio St.3d 481, 2006-Ohio-6109, explained:

[T]he intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the law-making body, there is no occasion to resort to other means of interpretation. **The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.**

[*Id.* at 483, quoting *Slingluff v. Weaver*, 66 Ohio St. 621, Syllabus ¶ 2 (1902) (emphasis added)]

Contrary to the holding below, the MLA plainly permits its registrants to make interest-bearing loans without requiring more than a single payment by the borrower. R.C. 1321.57(A) provides:

Notwithstanding any other provisions of the Revised Code, a registrant may contract for and receive interest ... at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan. **Loans may be *interest-bearing*** or precomputed. (Emphasis added).⁵

R.C. 1321.51(F) defines an “interest-bearing loan” as “a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.”

It’s that simple. R.C. 1321.57(A) and R.C. 1321.51(F) broadly authorize a MLA registrant to make “interest-bearing” loans without establishing a minimum limit on the loan term or the number of installments. Here, the operative language of Scott’s loan agreement follows the express language of R.C. 1321.51(F)’s definition of an “[i]nterest-bearing loan”:

PROMISE TO PAY. You promise to pay us \$500.00 (the Principal Amount of this loan) plus interest at a rate of 25% per annum on the principal outstanding for the time outstanding from the date of this Customer Agreement until paid in full. Interest shall be computed daily upon the principal balance outstanding by using the simple interest method, assuming a 365-day year.

[Supp. at 1]

This interest-bearing loan language in Scott’s loan agreement distinguishes it from a precomputed loan, for which the debt is always expressed as a fixed amount of both principal and precomputed interest regardless of prepayment. R.C. 1321.51(G). As the court of appeals properly noted, Cashland’s loan to Scott is not a precomputed loan.

⁵ R.C. 1321.571 permits an interest rate of 25 percent “[a]s an alternative to the interest permitted in division (A) of section 1321.57.”

B. The Court Of Appeals Misread The MLA's Plain Language By Ignoring Basic Rules Of Grammar

The court of appeals below violated the cardinal rule of statutory construction by resorting to “interpret” R.C. 1321.51(F), rather than just applying its plain terms. The court did so by ignoring basic rules of grammar and finding an ambiguity in R.C. 1321.51(F)’s definition of “interest-bearing loans” where none exists. The court of appeals stated:

According to Cashland, “from time to time” modifies “unpaid principal balances outstanding[,]” and, therefore, a loan could be interest-bearing even if it was collected in a single installment. However, “from time to time” could just as readily modify “computed, charged, and collected[,]” which would require interest to be collected in multiple installments.... In other words, the statute is ambiguous.

[Court of Appeals’ Decision ¶ 8]

This erroneous conclusion opened the door for the court to consider factors outside of the plain terms of the statute. [Court of Appeals’ Decision ¶ 9] The court of appeals thus “interpreted” R.C. 1321.51(F) *in pari materia* with the court’s unsupported assumption as to the legislative intent behind adoption of the STLA. Without reference to any provision of the STLA, the court concluded that the General Assembly intended the STLA to prohibit all loans of short duration like the one Scott received from Cashland and, thus, an “interest-bearing loan” under R.C. 1321.51(F) of the MLA must require more than a single installment. So, the court of appeals determined that the phrase “from time to time” at the end of the definition of “interest-bearing loan” in R.C. 1321.51(F) somehow modifies the verb phrase “computed, charged, and collected” earlier in the sentence, rather than the last antecedent of “from time to time”: “unpaid principal balances outstanding.”

The court of appeals should never have resorted to the *in pari materia* rule of construction in the first place. That rule “is limited to those situations where some doubt or

ambiguity exists in the wording of a statute.” *State ex rel. Celebrezze*, 32 Ohio St.3d at 27-28. The rule was never meant to permit courts “to ignore the plain and unambiguous language in a statute in the guise of statutory interpretation.” *State v. Krutz*, 28 Ohio St.3d 36, 37-38 (1986).

The court of appeals found an ambiguity in R.C. 1321.51(F) only because it disregarded the well-settled **Rule of the Last Antecedent**, which this Court has adopted as a basic rule of grammar in statutory construction cases. When reading a statute, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. One such grammatical rule is the Rule of the Last Antecedent – that is, a modifying phrase refers solely to the word or phrase that immediately precedes it. In *Hedges v. Nationwide Mutual Ins. Co.*, 109 Ohio St.3d 70, 2006-Ohio-1926, the Court held:

R.C. 1.42 provides that “[w]ords and phrases [in a statute] shall be read in context and construed according to the rules of grammar and common usage.” **The rules of grammar are clear that referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent.**

[*Id.* at 75, citing *Indep. Ins. Agents of Ohio, Inc. v. Fabe*, 63 Ohio St.3d 310, 314 (1992) (emphasis added)]

Here, the plain meaning of “interest-bearing loans” under R.C. 1321.51(F) is obvious once the grammatical Rule of the Last Antecedent is properly applied. In the phrase “interest is computed, charged, and collected on unpaid principal balances outstanding from time to time,” the preposition “from time to time” modifies its last antecedent (the word that immediately precedes it), “outstanding,” to form the common adjectival participial phrase “outstanding from time to time.” That phrase in turn modifies its last antecedent, “balances,” which is part of the noun phrase “unpaid principal balances.” Thus, a loan is “interest-bearing” under R.C. 1321.51(F) when interest is computed, charged, and collected based on the amount of the unpaid principal balance at any particular time. When the outstanding balance changes from time to

time (as is the case when a borrower prepays), interest must be computed, charged and collected based on the resulting, lower principal balance. This is what distinguishes an interest-bearing loan from a precomputed loan for which the debt includes a precomputed amount of interest.

Indeed, the phrase “outstanding from time to time” is commonly used in the finance world to modify “principal balances” – just as it does in the MLA. *See, e.g., Maloof v. C.I.R.*, 456 F.3d 645, 649 (6th Cir. 2006) (“Borrower agrees to pay Bank interest on the unpaid principal balance **outstanding from time to time** on the Demand Loan”); *Prudential Ins. Co. of Am. v. City of Boston*, 479 B.R. 210 (1st Cir. 2012) (loan provided that “interest on the principal balance of the Loan **outstanding from time to time** shall accrue from the Closing Date up to and including the Maturity Date....”); *Highlands Ind. Bank v. Pages-Morales*, 2012 WL 1802364, *3 (S.D. Fla. 2012) (guaranty defined indebtedness as “all of the principal amount **outstanding from time to time** and at any one or more times, accrued unpaid interest thereon”); *Gary Comer, Inc. v. Wallace*, 2001 WL 1173498, *1 (N.D. Ill. 2001) (“[i]nterest shall accrue ... on the unpaid principal amount of this Note **outstanding from time to time**....”); *In re Staley*, 2000 WL 33709684, *1 (Bankr. D.S.C. 2000) (promissory note specified “interest to be due and to accrue on the unpaid principal balance **outstanding from time to time** hereon from the date hereof until maturity”); *Smith v. Town North Bank*, 2012 WL 5499406, *3 (Tex. App. 2012) (guaranty defines indebtedness as “all of the principal amount **outstanding from time to time**”); *Stepping Stone Homes, Inc. v. Wisconsin Public Service Corp.*, 2011 WL 3300200, *2 (Wis. App. 2011) (contract provided that buyer would pay \$85,500 with interest “on the balance **outstanding from time to time**”) (emphasis added).

When R.C. 1321.51(F) is read correctly, no ambiguity exists. A loan is interest-bearing where, as here, the debt is expressed as the principal amount, and interest is determined based on

the then-existing principal balance. Such a loan is “interest-bearing,” regardless of how many times interest is collected or the number of scheduled installments. As Judge Dickinson’s dissenting opinion below succinctly states:

[The loan agreement] indicated that [Cashland] would compute on a daily basis the amount of interest that [Cashland] would charge and collect from Mr. Scott based on the “principal balance outstanding” at the time of computation. It further explained that Mr. Scott could “reduce the amount of interest that will accrue” on the loan by prepaying some or all of the Principal Amount. The Agreement, therefore, satisfied the requirements of an interest-bearing loan under Section 1321.51(F).

[Decision ¶ 19 (Dickinson, dissenting)]

Contrary to the split majority’s conclusion below, the plain language of R.C. 1321.51(F) does not even speak to the number of installments for an interest-bearing loan; it simply states how the borrower’s debt is expressed and how interest is determined. *No* language in R.C. 1321.51(F) states that an interest-bearing loan cannot be a single installment loan. So long as interest is calculated based on whatever the principal balance is at that point in time, it does not matter whether the loan is to be paid in a single installment or over multiple installments. It is still an “interest-bearing loan” under R.C. 1321.51(F) and thus is permitted by the MLA.

C. The Court Should Defer To The Department’s Longstanding Allowance Of Single Installment MLA Loans

As previously noted, the Department of Commerce – the state agency charged with regulating and enforcing the MLA – has consistently applied the plain language of R.C. 1321.51(F) by permitting single installment loans under the MLA for more than thirty years. But here, the court of appeals compounded its fundamental error of going beyond the unambiguous language of R.C. 1321.51(F) by ignoring – indeed, not even mentioning a single word about – the Department’s allowance of single installment loans under the MLA. In doing so, the lower

court eschewed the “well-settled rule that courts, when interpreting statutes, must give due deference to an administrative interpretation formulated by an agency that has accumulated substantial expertise, and to which the General Assembly has delegated the responsibility of implementing the legislative command.” *Swallow v. Industrial Comm’n of Ohio*, 36 Ohio St.3d 55, 57 (1988) (emphasis added); *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 468, 2004-Ohio-5717; *State ex rel. McLean v. Industrial Comm’n of Ohio*, 25 Ohio St.3d 90, 92 (1986).

The court of appeals has created a regulatory nightmare for the Department and Ohio lenders by striking down the administrative interpretation and enforcement that have controlled the licensing and examination review of MLA lenders for more than thirty years – without even a passing reference (let alone deference) to the Department’s historic position.

D. Ohio’s Other Courts of Appeals Consistently Follow The MLA’s Plain Language And Enforce Single Installment Loans

Like the Department, courts of appeals in at least seven other Ohio districts follow the plain reading of the MLA and have consistently upheld judgments for Cashland on single installment loans under the MLA:

- Second District: *Ohio Neighborhood Finance, Inc. v. Douglas*, 2d Dist., 191 Ohio App.3d 322, 2010-Ohio-6092, ¶ 13 (holding that 25% interest rate in Cashland’s 16-day, single installment MLA loan is permitted); *Ohio Neighborhood Finance, Inc. v. Header*, 2d Dist., 2010-Ohio-6095, ¶ 13 (enforcing 13-day, single installment MLA loan); *Ohio Neighborhood Finance, Inc. v. Brothers*, 2d Dist., 2010-Ohio-5746, ¶13 (same); *Ohio Neighborhood Finance, Inc. v. Farley*, 2d Dist., 2010-Ohio-6097, ¶ 13 (enforcing 27-day, single installment MLA loan).
- Fourth District: *Ohio Neighborhood Finance, Inc. v. Dotson*, 4th Dist., 2010-Ohio-3366, ¶¶ 6–7 (enforcing 25% interest rate under single installment MLA loan).

- Fifth District: *Ohio Neighborhood Finance, Inc. v. Wilkinson*, 5th Dist. 2010-Ohio-796, ¶ 11 (enforcing Cashland’s single installment MLA loan); *Ohio Neighborhood Finance, Inc. v. Evert*, 5th Dist., 2010-Ohio-797, ¶¶ 10-11 (same).
- Sixth District: *Ohio Neighborhood Finance, Inc. v. Powell*, 6th Dist., 2010-Ohio-1706, ¶ 8 (enforcing Cashland’s single installment MLA loan).
- Seventh District: *Ohio Neighborhood Finance, Inc. v. Marsh*, 7th Dist. No. 09-MA-164, 2010-Ohio-3163, ¶¶ 10-11 (MLA permitted Cashland to charge 25% interest for two-week, single installment loan); *Ohio Neighborhood Finance, Inc. v. Adkins*, 7th Dist., 2010-Ohio-3164 (same).
- Eighth District: *Ohio Neighborhood Finance, Inc. v. Christie*, 8th Dist. No. 94821, 2010-Ohio-5017, ¶ 10 (holding that Cashland had “clear statutory authority” under the MLA to charge an interest rate of 25% for a two-week, single installment loan).
- Tenth District: *Ohio Neighborhood Finance, Inc. v. Massey*, 10th Dist., 2011-Ohio-2165, ¶ 17 (enforcing 25% interest rate under Cashland’s single installment MLA loan).

These courts had no trouble enforcing Cashland’s single installment loans under the MLA. The **only** aberration is the Ninth District’s decision in the present case.

Proposition of Law No. II: The Short Term Loan Act, R.C. 1321.35 to R.C. 1321.48, does not prohibit MLA registrants from making single installment loans of short duration permitted by the express terms of the MLA, R.C. 1321.57.

A. The STLA Does Not Prohibit A MLA Registrant From Making A Two-Week, Single Installment Loan Under The MLA

The linchpin of the court of appeals' decision is its conclusion that the General Assembly "intended the Short-Term Lender Law to proscribe" any loan "to be repaid in full in two weeks." [Decision at ¶ 12] Even though the General Assembly's intent is manifested in the express language of the STLA, *Tomasik*, 111 Ohio St.3d at 483, the court of appeals did not identify where the STLA contains language proscribing a two-week or single installment loan made pursuant to the MLA. The court of appeals could not do so because it doesn't exist.

The STLA nowhere limits the lending authority under the MLA. Instead, the STLA's loan restrictions are expressly limited to loans made by a STLA "licensee," which Cashland is not. R.C. 1321.39. And although R.C. 1321.36(A) prohibits persons from making "short-term loans" without a STLA license, R.C. 1321.35(A) expressly limits the definition of a "short-term loan" to "a loan made pursuant to Sections 1321.35 to 1321.48 of the Revised Code [the STLA]." Thus, a "short-term loan" is simply a loan made under the STLA, rather than another lending statute such as the MLA. The STLA does not require a lender to obtain a license under the STLA unless the lender is relying on the STLA in making a loan. Just like the MLA, the STLA provides optional lending authority. If a MLA-registered lender makes a loan under the MLA, the STLA simply does not apply. Nothing in the STLA states otherwise.

Both the Department and the Ohio Attorney General agree with this same plain reading of the STLA. The Attorney General rightly opines that the STLA licensing requirement "applies only to lenders making loans under the Short-Term Loan Act, and not to all lenders of loans of

short duration” – the same position taken by the Department. 2008 Ohio Atty.Gen.Ops. No. 2008-036, at *3. The Attorney General has also made it clear that “[i]f a person has a valid license to make another type of loan” under a different statute, “that loan is not a short-term loan subject to the limitations set forth in R.C. 1321.40” of the STLA. *Id.* at n.5.

The Department’s regulatory position about the scope of the STLA – backed by the plain language of the statute itself and the opinion of the Attorney General – are entitled to judicial deference. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 468 (2004). But the court of appeals ignored the plain limitations of the STLA’s express language. It paid no attention to the Department’s administrative interpretation that the STLA provides alternative rate authority and does not supplant the lending authority already available under preexisting Ohio lending statutes, such as the MLA. And, the decision below mentions not one word about the Attorney General’s concurrence with the Department’s regulatory position.

If the General Assembly had intended to prohibit single installment MLA loans in Ohio, it knew how to do so. *But it didn’t.* If the General Assembly had intended to prohibit a two-week MLA loan, it knew how to do so. *But it didn’t.* If the General Assembly had intended to state that the STLA prevails over all other Ohio lending statutes, including the MLA, it knew how to do so. *But it didn’t.* And, if the General Assembly had even intended to make the STLA the exclusive means by which an Ohio lender could make any loan of short duration, it knew how to do so. *But again it didn’t.*

B. H.B. 545 Confirms The STLA Was Not Intended To Be The Exclusive Lending Authority For Short Term Lending

Aside from the plain language of the STLA itself, one of the most compelling pieces of evidence that the General Assembly did **not** intend the STLA to be the exclusive means by

which lenders can make short term, single installment loans in Ohio is the very bill that enacted the STLA: H.B. 545.

As previously noted, Section 4 of H.B. 545 actually encourages lenders previously licensed under the repealed Check-Cashing Lender Act to now use licensing statutes other than the STLA by providing a license fee discount under the Small Loan Act – the provisions of which are identical to the MLA in broadly permitting all “interest-bearing” loans, including those repayable in a single installment. *Compare* R.C. 1321.01(A)(6) and 1321.13(A) with R.C. 1321.51(F) and 1321.57(A). If the General Assembly had really intended the STLA to be the exclusive lending authority for lenders previously licensed under the repealed Check-Cashing Lender Act, the General Assembly would not have laid out a roadmap for those lenders to become licensed under a **different** lending statute and encouraged them to do so by offering a license fee discount. But again, the court of appeals ignored the language of H.B. 545 when it declared that the General Assembly intended the STLA to be the exclusive authority for all loans of short duration.

The court of appeals’ conclusion that lenders’ use of the MLA to make single installment loans would render the STLA “meaningless” is similarly offbase. There can be no doubt that H.B. 545, including its enactment of the STLA, accomplished its mission of preventing lenders from charging the more expensive fees and interest under the prior Check-Cashing Lender Act and requiring those lenders to instead comply with either the new STLA or the MLA or Small Loan Act. The interest and fees allowed by the MLA, for example, are 40% lower for a typical \$500 loan than the fees and interest that were permitted under the now repealed Check-Cashing Loan Act. In fact, adoption of H.B. 545 cut back the revenues of lenders who make short-term

consumer loans so much that approximately one-half of their total locations in Ohio closed. Cashland itself closed 43 stores in Ohio as a direct result of the passage of H.B. 545.

The continued ability of registrants under MLA or the Small Loan Act to make single installment loans under the plain language of those statutes does not render the STLA meaningless. The STLA remains an optional lending authority in Ohio, as it was intended to be. If a lender seeks to charge a 28% interest rate pursuant to R.C. 1321.40(A) or otherwise seeks to make a loan under the STLA, that lender must comply with all of the STLA's provisions.

C. **Since The Enactment Of The STLA, The General Assembly Has Left Undisturbed The Department's Allowance Of Single Installment MLA Loans**

The Department's regulatory policy of permitting single installment loans of short duration under the MLA was well known to members of the General Assembly when they passed H.B. 545 in 2008. And, there is no question that the General Assembly was also aware of the publicized prevalence of single installment loans the Department has allowed MLA registrants to make after the enactment of the STLA.

Significantly, despite the General Assembly's knowledge of the Department's consistent approval of single installment MLA loans of short duration during the last five years, the General Assembly has not amended the MLA or the STLA to prohibit them. This silence from the Statehouse is deafening. Such legislative inaction in the face of known administrative interpretation of a statute within its regulatory purview shows legislative intent to leave undisturbed the Department's position of allowing MLA registrants to make single installment loans in compliance with the MLA. This Court was faced with similar legislative acquiescence to a state agency's policy in *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463 (2004), in which the Court held:

After the Lemon Law went into effect, the Attorney General initiated a policy that expressly authorized qualified dispute-resolution boards to use a formula allowing a setoff for use of the vehicle. Defendants contend that they were following established policy by using the mileage setoff....

We presume that the General Assembly was aware of the policy that remained in place for years. Nevertheless, the General Assembly took no steps to legislatively overrule the long-standing policy when amending the Lemon Law in 1999. **Such legislative inaction in the face of long-standing interpretation suggests legislative intent to retain the existing law.**

[*Id.* ¶¶ 25 – 26 (emphasis added)]

Accord: CBS, Inc. v. Federal Communications Comm'n, 453 U.S. 367, 384-85 (1981)

(“The Commission’s repeated construction of [the statute] ... comports with the statute’s language and legislative history and has received congressional review. Therefore, departure from that construction is unwarranted. Congress’ failure to repeal or revise [the statute] in the face of such administrative interpretation [is] persuasive evidence that interpretation is the one intended by Congress.”)

Here, there is even more compelling evidence than in *Maitland* and *CBS* that the General Assembly intends to leave undisturbed the Department’s policy of allowing single installment loans under the MLA. **The General Assembly rejected amendments to the MLA in 2009 that would have curtailed single installment MLA loans or those with a term of less than three months.** See H.B. 209. In *Anderson v. Barclay’s Capital Real Estate, Inc.*, Slip Opinion No. 2013-Ohio-1933, this Court recently held that the General Assembly’s *rejection* of an amendment to include mortgage servicers within the ambit of the Consumer Sales Practices Act (“CSPA”) supported the Court’s conclusion that mortgage servicers are not covered by the CSPA. *Id.* at ¶¶ 23-25. The logic here is no different: The General Assembly’s *rejection* of an

amendment to prohibit single installment loans under the MLA supports the conclusion that those loans are still permitted by the MLA.

Not only has the General Assembly left intact the Department's consistent and effective regulatory enforcement of allowing single installment loans under the MLA, it has affirmatively rejected efforts to overturn the Department's regulatory position. But again, none of this was even considered by the split majority of the court of appeals below.

D. The MLA Controls Over The STLA Because The MLA Applies "Notwithstanding Any Other Provisions Of The Revised Code"

The court of appeals' conclusion that the General Assembly intended the STLA to prohibit Cashland's two-week MLA loan is wrong for yet another reason. Under the express language of R.C. 1321.57(A), the MLA controls over the STLA even if the STLA contains provisions that are inconsistent with the MLA (which it does not). While *nothing* in the STLA suggests it was intended to impose new limitations on, or otherwise override, lending under the MLA or other lending statutes, the first eight words of the operative MLA statute could not be more clear: "*Notwithstanding any other provisions of the Revised Code,*" loans conforming to the MLA are permitted. R.C. 1321.57(A). Given this clear legislative mandate, how can anyone conclude that "[an]other provision of the Revised Code," here the STLA, imposes new limitations on MLA loans as the decision below holds?

Both the United States Supreme Court and this Court hold that a "notwithstanding" clause like the one contained in the MLA means what it says: the statute takes precedence over all others. Holding otherwise would render the "notwithstanding" language meaningless. In *Cisneros v. Alpine Ridge Group*, 508 U.S. 10 (1993), the Court held: "[I]n construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section."

Id. at 18. The Court noted that courts “have interpreted similar ‘notwithstanding’ language ... to supersede all other laws, stating that a clearer statement is difficult to imagine.” *Id. Accord: In re Eubanks*, 219 B.R. 468, 470 (6th Cir. BAP 1998) (“[t]he introductory phrase, ‘[n]otwithstanding subsection (b)(2),’ clearly signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section”); *State ex rel. Carmean v. Board of Educ. of Hardin County*, 170 Ohio St. 415, 422 (1960) (“the General Assembly inserted the word, ‘notwithstanding,’ and by so doing clearly indicated its intent that proceedings under Section 3311.261, Revised Code, should take precedence over pending proceedings previously instituted under the other enumerated sections”).

But remarkably, the split decision of the court of appeals completely fails to consider the *direct and controlling* “notwithstanding” language in R.C. 1321.57(A) in the MLA that requires a conclusion directly opposite the court’s view that the assumed intent of the STLA “proscribes” a two-week, single installment loan made by a MLA registrant. There is no inconsistency between the MLA and the STLA. Both statutes provide optional lending authority for their respective licensees. But even if an inconsistency between these statutes somehow exists, the General Assembly has expressly instructed that the MLA prevails by stating that MLA registrants may contract for interest-bearing loans “[n]otwithstanding any other provisions of the Revised Code.” R.C. 1321.57(A).

The court of appeals’ unsupported conclusion concerning the intent of the STLA cannot override the unambiguous “notwithstanding” clause of the MLA. *See Talbott v. State ex rel. Houston*, 5 Ohio App. 262, 269 (1916) (although “[t]he general policy, the spirit and the reason of an act may properly be applied to reconcile conflicting or doubtful provisions of an act, [it] can not be permitted to override the effect of words of clear import”).

E. Any Changes In The Law Should Be Made By The General Assembly, Not The Courts

In *State ex rel. Celebrezze v. Board of County Comm'rs of Allen County*, 32 Ohio St.3d 24, 27-28 (1987), this Court held that “[a]ny incongruity between the legislature’s intent and the language of [the statute] should be resolved by the legislature, rather than the courts.” But here, the court of appeals did not heed this Court’s admonition of judicial restraint. Instead, the Ninth District refused to take the MLA or the STLA as it found them and took it upon itself to do what H.B. 209 sought and failed to do in 2009. The court did so by going outside the plain language of the statutes, re-“interpreting” the MLA based on its incorrect assumption of the General Assembly’s “intent” behind the STLA, and overriding the Department’s consistent application of those laws in a way that the General Assembly has already rejected. By this Court’s own standard – and by any measure – the court of appeals improperly legislated from the bench. *Weaver v. State*, 120 Ohio St. 44, 46 (1929); *Sears v. Weimer*, 143 Ohio St. 312, 316 (1944) (“[t]o interpret what is already plain is not interpretation, but legislation, which is not the function of the courts, but of the general assembly”).

Cashland understands that it has been politically popular in recent years to criticize the short-term consumer lending industry and blame it for various societal ills. Though the negativity is misplaced, the point here is that political views about short-term lending have no place in a court of law. As this Court teaches:

All arguments going to the soundness of legislative policy choices ... are directed to their proper place, which is outside the door to this courthouse. This court has nothing to do with the policy or wisdom of a statute. That is the exclusive concern of the legislative branch of the government.

[*State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 455-56 (1999)]

Here, the plain wording of the MLA, the STLA and H.B. 545, the Department's longstanding administrative construction and enforcement of both statutes, the Attorney General's opinion in 2008, the legislative history of H.B. 545, and the General Assembly's rejection of H.B. 209 in 2009 all compel the conclusion that Cashland's loan agreement with Scott is permitted by the MLA.

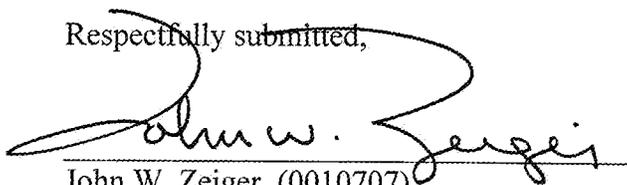
Cashland and hundreds of other MLA registrants have relied in good faith on the plain language of the MLA and the Department's express approval of single installment loans made under it. They have made literally hundreds of millions of dollars of MLA loans over the past thirty years (over \$743 million in 2009 alone), many of which were reviewed in thousands of Department examinations without any suggestion of impropriety. Retroactively overthrowing the Department's position in a case of first impression will flood Ohio courts with lender-borrower disputes and a propagation of allegations about past practices. Indeed, the court of appeals' decision below has already spawned two putative class action proceedings against Cashland for doing exactly what the Department expressly approved. *See Adams v. Ohio Neighborhood Finance, Inc.*, U.S. District Court, S.D. Ohio, Western Division, Case No. 1:12-cv-947, filed December 8, 2012; and a counterclaim filed by the Murray & Murray law firm on December 19, 2012 in *Ohio Neighborhood Finance, Inc. v. Leggett*, Case No. CV-12-796412, Cuyahoga County Common Pleas Court. Dozens more class actions will be filed almost instantaneously if this Court rejects the Department's longstanding interpretation of the MLA. The floodgates would open, and the class-action bar will reap a huge windfall.

Under the circumstances here, it would be entirely inappropriate to cripple Cashland and the entire MLA lending industry by retroactively exposing them to enormous liability for hundreds of thousands of transactions that occurred throughout Ohio for years.

CONCLUSION

For all of these reasons, Appellant Ohio Neighborhood Finance, Inc. (Cashland) requests the Court to: (i) hold that Cashland's loan agreement with Scott is enforceable under the MLA, (ii) reverse the court of appeals' decision and vacate the judgment of the trial court which refused to recognize the enforceability of Cashland's loan agreement under the MLA, and (iii) enter judgment in Cashland's favor in the amount of \$510.16 (the \$545.16 total amount owed as of December 19, 2008 less the \$35 Scott subsequently paid), which will dispense with the need for a remand and further proceedings.

Respectfully submitted,

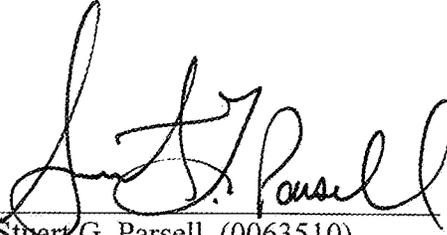
A handwritten signature in black ink, appearing to read "John W. Zeiger", is written over a horizontal line. The signature is fluid and cursive.

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Stuart G. Parsell (0063510)
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Counsel for Plaintiff-Appellant
Ohio Neighborhood Finance, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. mail, postage prepaid, this 28th day of June, 2013 upon Appellee Rodney Scott, 250 13th Street, Elyria, Ohio 44035.


Stuart G. Parsell (0063510)

985-001:448178

APPENDIX

IN THE SUPREME COURT OF OHIO

OHIO NEIGHBORHOOD FINANCE, INC., :
 :
 : **18-0103**
 Plaintiff-Appellant, : Appeal from the Court of Appeals
 : for the Ninth Judicial District
 :
 vs. :
 : Court of Appeals
 : Case No. 11CA010030
 :
 RODNEY SCOTT, :
 :
 :
 Defendant-Appellee. :

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT
OHIO NEIGHBORHOOD FINANCE, INC.

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Defendant-Appellee, *Pro Se*

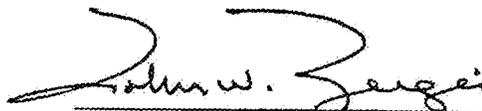


NOTICE OF APPEAL OF PLAINTIFF-APPELLANT
OHIO NEIGHBORHOOD FINANCE, INC.

Plaintiff-Appellant Ohio Neighborhood Finance, Inc. dba Cashland hereby gives notice of appeal to the Supreme Court of Ohio from the Decision and Journal Entry of the Lorain County Court of Appeals, Ninth Appellate District, filed in Court of Appeals Case No. 11CA010030 on December 5, 2012.

This case is one of public and great general interest.

Respectfully submitted,

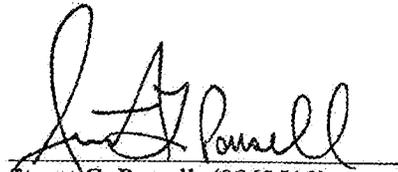


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Counsel for Plaintiff-Appellant
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via U.S. mail, postage prepaid, this 17th day of January, 2013 upon Appellee Rodney Scott, 250 13th Street, Elyria, Ohio 44035.


Stuart G. Parsell (0063510)

985-001:411088

COURT OF APPEALS

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

FILED IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

OHIO NEIGHBORHOOD FINANCE, INC.

2012 DEC - 5 VA 11:31
C.A. No. 09CA010030

Appellant

v.

9th APPELLATE DISTRICT
APPEAL FROM JUDGMENT

RODNEY SCOTT

ENTERED IN THE
ELYRIA MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE No. 09CVF01488

Appellee

DECISION AND JOURNAL ENTRY

Dated: December 3, 2012

BELFANCE, Judge.

{¶1} Ohio Neighborhood Finance, Inc., doing business as Cashland, appeals the judgment of the Elyria Municipal Court. For the reasons set forth below, we affirm.

I.

{¶2} On December 5, 2008, Cashland agreed to loan Mr. Scott \$500. The Customer Agreement signed by Mr. Scott set forth the "Payment Schedule" as "[o]ne payment in the amount of \$545.16 due on 12/19/08 (Payment Date)." On May 28, 2009, Cashland filed a complaint against Mr. Scott, alleging that he had not repaid the loan. It sought a judgment of \$570.16 against Mr. Scott along with 25% yearly interest.

{¶3} Mr. Scott did not respond to Cashland's complaint, and Cashland moved for default judgment. Following a hearing, the magistrate issued a decision, recommending that Cashland was only entitled to a judgment of \$465 at 8% annual interest because the loan failed to comply with the Ohio Mortgage Loan Act by issuing a loan not permitted by the Act. Cashland

objected to the magistrate's decision, but the trial court overruled its objections and entered the judgment recommended by the magistrate.

{¶4} Cashland has appealed, raising two assignments of error. Because the assignments of error are related, we address them together.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DETERMINING THAT THE OHIO MORTGAGE LOAN ACT ("MLA"), R.C. 1321.51, ET SEQ., DOES NOT APPLY TO THE LOAN AT ISSUE, AND THAT CASHLAND IS BARRED FROM COLLECTING INTEREST AND FEES ON THE LOAN AS AVAILABLE UNDER THE MLA.

ASSIGNMENT OF ERROR II

THE TRIAL COURT COMMITTED REVERSIBLE ERROR DETERMINING THAT CASHLAND VIOLATED THE OHIO MORTGAGE LOAN ACT ("MLA"), R.C. 1321.51, ET SEQ.

{¶5} Cashland argues the trial court erred when it overruled Cashland's objections to the magistrate's decision. According to Cashland, the loan in this case was permitted under the Ohio Mortgage Loan Act. Therefore, because Cashland is a registrant, it argues, it was entitled to charge the fees and rate of interest allowed by the Act. We disagree.

{¶6} This is a case of statutory interpretation, which we review *de novo*. "In determining how to apply a statute, our paramount concern is the legislative intent in enacting the statute. In determining legislative intent, the court first reviews the applicable statutory language and the purpose to be accomplished. In doing so, we must give effect to every word and clause in the statute." (Internal quotations and citation omitted.) *In re Estate of Centorbi*, 129 Ohio St.3d 78, 2011-Ohio-2267, ¶ 12. If a statute's language is clear and unambiguous, it is applied as written. *Id.* at ¶ 14. "Ambiguity exists if the language of the statute is susceptible of

more than one reasonable interpretation.” *Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St.3d 38, 40 (2001).

{¶7} The Ohio Mortgage Loan Act is codified in R.C. 1321.51 et seq. R.C. 1321.57(A) provides that,

[n]otwithstanding any other provisions of the Revised Code, a registrant [under the Ohio Mortgage Loan Act] may contract for and receive interest, calculated according to the actuarial method, at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan. Loans may be interest-bearing or precomputed.

There is no dispute that Cashland is a registrant under the Ohio Mortgage Loan Act. The issue in this case is whether the loan qualified as a permissible loan under the act. Cashland does not suggest that the loan in this case constituted a “precomputed loan” under the Ohio Mortgage Loan Act. *See* R.C. 1321.57(D)(1) (Precomputed loans “shall be repayable in monthly installments of principal and interest combined, except that the first installment period may exceed one month * * * and provided further that monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.”). Instead, it argues that Mr. Scott’s loan was an “interest-bearing loan.”

{¶8} An “[i]nterest-bearing loan” is “a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.” R.C. 1321.51(F). According to Cashland, “from time to time” modifies “unpaid principal balances outstanding[,]” and, therefore, a loan could be interest-bearing even if it was collected in a single installment. However, “from time to time” could just as readily modify “computed, charged, and collected[,]” which would require interest to be collected in multiple installments. *See* R.C. 1321.51(F). In other words, the statute is ambiguous. *Bailey*, 91 Ohio St.3d at 40.

{¶9} “In determining legislative intent when faced with an ambiguous statute, the court may consider several factors, including the object sought to be obtained, circumstances under which the statute was enacted, the legislative history, and the consequences of a particular construction.” *Id.* See also R.C. 1.49. Furthermore,

statutes which relate to the same general subject matter must be read in *pari materia*. And, in reading such statutes in *pari materia*, and construing them together, this court must give such a reasonable construction as to give the proper force and effect to each and all such statutes. The interpretation and application of statutes must be viewed in a manner to carry out the legislative intent of the sections. All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously. This court in the interpretation of related and co-existing statutes must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict.

(Internal quotations, citations, and emphasis omitted.) *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372 (1994). See also R.C. 1.47(B) (“[I]t is presumed that * * * [t]he entire statute is intended to be effective[.]”).

{¶10} At issue in this case is the interplay of two provisions of the Ohio Revised Code: the Short-Term Lender Law (R.C. 1321.35 et seq.) and the Ohio Mortgage Loan Act (R.C. 1321.51 et seq.). The General Assembly repealed the Check-Cashing Lender Law and enacted the Short-Term Lender Law in 2008. See Am.Sub.H.B. No. 545, 2008 Ohio Laws File 91. See also R.C. 1321.35-48. The Short-Term Lender Law contemplates a single payment loan and caps the total amount of a loan at \$500. R.C. 1321.39(A). It also requires that the duration of the loan be not less than 31 days. R.C. 1321.39(B). Registrants under the Short-Term Lender Law are also prohibited from charging an interest rate higher than 28 percent or additional fees such as a loan initiation fee. R.C. 1321.40(A); R.C. 1321.41(C). By contrast, while registrants under the Ohio Mortgage Loan Act (R.C. 1321.51 et seq) cannot charge as high a rate of interest

as the licensees under the Short-Term Lender Law, they can charge additional fees, may make larger loans, and may secure loans with property. *See* R.C. 1321.57(G)-(J).

{¶11} Cashland argues that, as a registrant under the Ohio Mortgage Loan Act, it was permitted to issue the loan in this case because the Ohio Mortgage Loan Act permits single-payment loans. However, to construe R.C. 1321.51(F) and 1321.57(C)(1)(a) in the manner Cashland suggests would permit the registrants under the Ohio Mortgage Loan Act to issue the payday loans that Short-Term Lender Law seeks to regulate. Cashland suggests that the General Assembly intended to allow lenders to choose between the Short-Term Lender Law and the Ohio Mortgage Loan Act. If true, however, no payday lender will ever register under the Short-Term Lender law, and payday-loan lenders would be allowed to issue loans in greater amounts and shorter durations than allowed by the Short-Term Lender Law, all the while charging fees prohibited under the Short-Term Lender law. *See* R.C. 1321.39(A)-(B), 1321.41 (C). The effect 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.

{¶12} The General Assembly clearly intended the Short-Term Lender Law to proscribe the type of loan issued here, i.e. a loan that was to be repaid in full in two weeks. Thus, in considering the statutes in *pari materia*, we conclude that a loan is an interest-bearing loan under the Ohio Mortgage Loan Act only if interest is computed, charged, and collected from time to time. This reading is as logical and natural as the one suggested by Cashland but does not render the Short-Term Lender Law meaningless. *See* R.C. 1.47(B); *Limbach*, 71 Ohio St.3d at 372.

{¶13} Nevertheless, Cashland argues that the loan in this case was not a single-installment loan, noting that Mr. Scott could make multiple payments before the loan came due or, if he was unable to pay on time, he could “arrange for an extended payment plan, which

could involve multiple payments over time." However, the loan expressly set forth the "Payment Schedule" as "[o]ne payment in the amount of \$545.16 * * *." By the terms of the loan, there was only one scheduled payment, and, therefore, interest was not being computed, charged, and *collected* from time to time. The fact that the loan did not prohibit multiple payments does not somehow alter the nature of the loan from a single-installment loan into a multiple-installment loan. *Russin v. Shepherd*, 11th Dist. No. 2006-G-2708, 2007-Ohio-3206, ¶ 55.

{¶14} Because the interest would be collected all at once, the loan in this case was not an interest-bearing loan as defined by the Ohio Mortgage Loan Act. *See* R.C. 1321.51(F). Nor did it qualify as a precomputed loan. *See* R.C. 1321.57(D). Thus, it was not a loan permitted by the Ohio Mortgage Loan Act, *see* R.C. 1321.57(A), and, therefore, Cashland was limited to an interest rate of eight percent per annum. R.C. 1343.01(A) ("The parties to a bond, bill, promissory note, or other instrument of writing for the forbearance or payment of money at any future time, may stipulate therein for the payment of interest upon the amount thereof at any rate not exceeding eight per cent per annum * * *").

{¶15} Accordingly, the trial court did not err when it overruled Cashland's objections to the magistrate's decision. Cashland's assignments of error are overruled.

III.

{¶16} Cashland's assignments of error are overruled, and the judgment of the Elyria Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Elyria Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.


EVE V. BELFRANCE
FOR THE COURT

MOORE, P. J.
CONCURS.

DICKINSON, J.
DISSENTING.

{¶17} The majority has correctly recognized that the disposition of this case hangs on whether the phrase "from time to time" in Section 1321.51(F) of the Ohio Revised Code refers to the interval at which interest must be "computed, charged, and collected" or whether it modifies the phrase "unpaid principal balances outstanding." R.C. 1321.51(F). If "from time to time" modifies "computed, charged, and collected," a loan is not an "[i]nterest-bearing loan" unless interest on the unpaid balance is computed from time to time, charged from time to time, and collected from time to time. If the phrase modifies "unpaid principal balances outstanding," an

"[i]nterest-bearing loan" is any loan in which interest accrues on a periodic basis, so long as that interest is computed, charged, and collected at some time. Under the second construction, all of the interest on a loan could be computed, charged, and collected at a single time as long as the computation was based on whatever the unpaid principal balance was at particular intervals.

{¶18} "When construing statutes, '[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.'" *City of Lancaster v. Fairfield County Budget Comm'n*, 83 Ohio St. 3d 242, 244 (1998) (quoting R.C. 1.42). "Statutes and contracts should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced constructions" *Id.* (quoting *Slinghuff v. Weaver*, 66 Ohio St. 621, 627 (1902)). The most natural and obvious reading of Section 1321.51(F) is that the phrase "from time to time" modifies the words it immediately follows, which are "balances outstanding." Accordingly, if a loan "expresse[s] [the debt owed] as the principal amount" and computes, charges, and collects interest on whatever the principal balance is at particular intervals, it qualifies as an "[i]nterest-bearing loan" under Section 1321.51(F).

{¶19} The Customer Agreement identified the \$500 that Neighborhood Finance loaned to Mr. Scott plus the loan origination charge and credit investigation fee as the "Principal Amount." It also indicated that Neighborhood Finance would compute on a daily basis the amount of interest that Neighborhood Finance would charge and collect from Mr. Scott based on the "principal balance outstanding" at the time of computation. It further explained that Mr. Scott could "reduce the amount of interest that will accrue" on the loan by prepaying some or all of the Principal Amount. The Agreement, therefore, satisfied the requirements of an interest-bearing loan under Section 1321.51(F).

{¶20} The municipal court reasoned that, because balances under an interest-bearing loan are expected to be outstanding from time to time, the definition of an interest-bearing loan was inconsistent with a single-payment loan. There is, however, no requirement under Section 1321.51(F) that the interest on an interest-bearing loan be collected from time to time. So long as the interest on a loan is calculated based on whatever the principal balance is from time to time: whether the calculation is made daily, weekly, monthly, or at some other interval, it is not material whether the loan is structured to be paid in a single installment or over multiple installments. See also R.C. 1321.57(C)(1)(a) (“With respect to interest-bearing loans . . . [i]nterest shall be computed on unpaid principal balances outstanding from time to time, for the time outstanding.”).

{¶21} The municipal court also opined that the language of Section 1321.57(C)(1)(b) suggests that an interest-bearing loan requires multiple payments. Under 1321.57(C)(1)(b), “[a]s an alternative to the method of computing interest set forth in division (C)(1)(a) of this section, a registrant may charge and collect interest for the first installment period based on elapsed time from the date of the loan to the first scheduled payment due date, and for each succeeding installment period from the scheduled payment due date to the next scheduled payment due date, regardless of the date or dates the payments are actually made.” The court reasoned that, because Section 1321.57(C)(1)(b) refers to installment periods, the legislature must have expected that interest-bearing loans would not be single-payment loans. The plain language of Section 1321.57(C)(1)(b) explains, however, that it is merely an alternative to Section 1321.57(C)(1)(a). Under Section 1321.57(C)(1)(a), “[i]nterest shall be computed [on an interest-bearing loan] on unpaid principal balances outstanding from time to time, for the time

outstanding.” There is no language in Section 1321.57(C)(1)(a) that indicates that an interest-bearing loan cannot be a single-payment loan.

{¶22} The municipal court also pointed to Section 1321.57(C)(2)(a) to support its conclusion that an interest-bearing loan may not be a single-payment loan. Under Section 1321.57(C)(2)(a), “[i]nterest shall not be compounded, collected, or paid in advance. However, . . . [i]nterest may be charged to extend the first monthly installment period by not more than fifteen days, and the interest charged for the extension may be added to the principal amount of the loan.” Just because Section 1321.57(C)(2)(a) contains language applying, on a discretionary basis, to loans with monthly installment periods, however, does not mean that all interest-bearing loans must have monthly installment periods.

{¶23} The municipal court also concluded that the Customer Agreement more closely resembled the definition of a precomputed loan. Under Section 1321.51(G), a “[p]recomputed loan” means a loan in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all scheduled payments will be made when due.” While the Agreement did indicate the amount that it anticipated Mr. Scott “will have paid after [he had] made all payments as scheduled,” it left open the possibility that he could pay the loan in advance and, thereby, “reduce the amount of interest that will accrue.” The Agreement also did not include interest in its calculation of the “Principal Amount.” Rather, the “Principal Amount” included only the \$500 that Mr. Scott had financed plus a \$30 loan origination charge and a \$10 credit investigation fee. Under Section 1321.51(E), the definition of “[i]nterest” does not include “loan origination charges” or “other fees and charges specifically authorized by law.” A fee for “credit investigations not exceeding ten dollars” is authorized under Section 1321.57(H)(1)(c).

{¶24} The municipal court also concluded that the Customer Agreement was not governed by the Ohio Mortgage Loan Act because it “look[ed] like” the type of loan formerly regulated under Ohio’s Payday Loan Act and intended to be regulated under the more recent Short-Term Lender Act. Similarly, the majority has suggested that the General Assembly intended the Short-Term Lender Act to regulate this type of loan. Regardless of the intent of the General Assembly in replacing the Payday Loan Act with the Short-Term Lender Act, nothing in the Short-Term Lender Act prohibits a loan under the Mortgage Loan Act that satisfies the requirements of the Mortgage Loan Act. Although “[t]he general policy, the spirit and the reason of an act may properly be applied to reconcile conflicting or doubtful provisions of an act, [it] can not be permitted to override the effect of words of clear import.” *Talbot v. State ex rel. Houston*, 5 Ohio App. 262, 269 (2d Dist. 1916). Section 1321.57(A) of the Ohio Revised Code specifically allows a registrant under the Mortgage Loan Act to enter into “precomputed” and “interest-bearing” loans and to receive interest in excess of the rate specified under Section 1343.01(A) if the loans meet the requirements of the act.

{¶25} The majority has ignored the plain language of Sections 1321.51 and 1321.57 of the Ohio Revised Code. I, therefore, dissent.

APPEARANCES:

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RODNEY SCOTT, pro se, Appellee.

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DARRELL L. DREHER and ELIZABETH L. ANSTAETT, Attorneys at Law, for Richard F. Keck, Amicus Curiae

THE STATE OF OHIO } Eric J. Rothgery
County of Lorain } Clerk of Elyria Municipal Court
HEREBY CERTIFIES THAT THE ABOVE AND FOREGOING IS
TRULY TAKEN FROM ORIGINAL OR COMPUTERIZED RECORDS
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF SAID COURT
THIS 11th DAY OF June 2011
BY: *[Signature]* Deputy Clerk

Elyria Municipal Court
601 Broad Street
Elyria, Ohio 44035

FILED

2011 JUN 15 P 1:00

CLERK OF
ELYRIA MUNICIPAL COURT
Civil No. 09CVF01488

BY:
JUDGMENT ENTRY

Ohio Neighborhood Finance, Inc.,
dba Cashland

Plaintiff

vs.

Rodney Scott

Defendant

The motion to set aside and the objections to the March 25, 2011 decision of the magistrate are overruled.

The Mortgage Loan Act, O.R.C. §§1321.51 et seq., does not apply to the 235.48% APR loan between the parties. The only law to allow one-payment, 14 day loans like this one, with charges, interest rate, and APR as here, was the Payday Loan Act, repealed by the legislature and by referendum before this loan was made. Plaintiff cannot collect any of the mortgage loan law's charges and more than the default interest rate under O.R.C. §1343.03(A) on the principal amount of the loan.

If the mortgage loan law does apply, plaintiff violated its terms by a precomputed loan due in 14 days by one scheduled payment, with interest above the reenacted O.R.C. §1321.57(A) ceiling, a default surcharge of 5% on the full loan, and check collection charges without a check written, presented and dishonored. Under O.R.C. §1321.56, the parties' stipulations as to interest and charges are invalid and plaintiff is limited to "interest" as defined and applicable to loans in the absence of O.R.C. §§1321.51 to 1321.60.

See the separate memorandum of opinion filed with this judgment and incorporated by reference here. The magistrate's decision is also adopted and incorporated by reference. Clerk shall journalize the memorandum of opinion and the magistrate's decision along with this judgment entry.

Judgment is entered for the plaintiff for the amount of \$465 plus 8% interest per annum from December 5, 2008, plus the court costs for the filing of this action.

[Signature]
JUDGE

CLERK TO SERVE ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR WITH NOTICE OF JUDGMENT AND DATE OF ENTRY UPON THE JOURNAL

THE STATE OF OHIO } Eric J. Rothgery
County of Lorain } ss Clerk of Elyria Municipal Court
HEREBY CERTIFIES THAT THE ABOVE AND FOREGOING IS
TRULY TAKEN FROM ORIGINAL OR COMPUTERIZED RECORDS
NOW ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL ON SAID COURT
THIS 13 DAY OF June 20 11
BY [Signature] Deputy Clerk

Elyria Municipal Court FILED
601 Broad Street
Elyria, Ohio 44035

JUN 15 P 1:00

CLERK OF
ELYRIA MUNICIPAL COURT

2261
P2201

**Ohio Neighborhood Finance, Inc.,
dba Cashland**

Plaintiff

Civil No. 09CVF01488

vs.

Rodney Scott

Defendant

Memorandum of Opinion

Plaintiff moves to set aside and objects to the March 25, 2011 magistrate's decision. A "motion to set aside" under Civ. R. 53(D)(2)(b) does not apply to magistrate decisions but only to orders issued under Civ. R. 53(D)(2)(a)(i) that "regulate the proceedings ... if not dispositive of a claim or defense of a party." The filing will be treated only as objections.

The objection to the magistrate's finding that this was a one-payment loan tied to the "payday" of defendant is overruled. The 12/5/08 loan reads: "Payment Schedule: *One payment* in the amount of \$545.16 due on 12/19/08 (Payment Date)." The witness testified that all of its loans are structured for very short durations, with only one payment, set up not to be "due back until a payday," just like former payday loans. A chance prepayment by a debtor or deferred collection by plaintiff does not change the basic structure of this loan.

The objection to the magistrate's interpretation of the interest-bearing language of O.R.C. §§1321.51 et seq. is overruled. This mortgage loan law does not say how payments are to be structured for interest-bearing loans, unlike when interest is precomputed. Still, a two-week, one-payment loan is incongruous with the definition of interest-bearing loans as having "unpaid *balances outstanding from time to time*" and the other statutory references to monthly installments for these loans. In reality, though, the loan to defendant better fits the definition of "precomputed." Our appeals court has twice called this same type of loan

J 261
P. 2201A

"precomputed." *Ohio Neighborhood Fin., Inc. v. King* (9th App. Dist., Summit, 2-2-11), No. 25409, 2011 WL 345933 and *Ohio Neighborhood Fin., Inc. v. McGeorge* (9th App. Dist., Summit, 2-9-11), No. 25410, 2011 WL 444143. Plaintiff admits that a short term, one payment loan is inconsistent with the "precomputed" standards of this mortgage loan law.

Also rejected is the objection to the decision's analysis of Ohio's usury laws and their histories. The Court does not see in the words of the Mortgage Loan Act, O.R.C. §§1321.51 et seq., the unambiguous authority for defendant's loan that plaintiff wants to be there. His loan looks like a payday loan under former O.R.C. §§1315.35 et seq. and the witness testified as much. This is baffling due to the recent public battle to ban these loans in favor of ones no shorter than 31 days under §§1321.35 et seq. No doubt the other usury laws have evolved since first enacted and overlap, but this does not mean they ever allowed the payday-type loan here. Such a finding would make enactment and repeal of the Payday Loan Act superfluous and no one would ever have reason to be licensed under the Short Term Loan law. That the effect of these laws on other usury laws was weighed is clear by the exemption at §1321.02 first for payday and now short term loan lenders from licensing under the "Small Loan Act," *without a reciprocal exemption* from licensing for small loan lenders (or mortgage loan lenders) to make payday or short term loans. Review of these laws, their history and context, especially the salary, payday, and short term lending laws meant to exclusively cover loans like this one, shows that they are *not* a random and careless patchwork of legislation as plaintiff argues, but enacted to achieve distinct regulatory ends.

The objection to the magistrate's consideration of the Short Term Loan Act is overruled. The term "short term loan" at O.R.C. §1321.36(A) in the prohibition that "no person shall engage in the business of making short term loans to a borrower... without first

J. 261
P. 2201B

obtaining a license" cannot sensibly be restricted to the definition at §1321.35(A) as "a loan made pursuant to sections 1321.35 to 1321.48." This would impose licensing only on the already licensed, an absurd tautology. Consistent with this Act's history and its goal to replace all payday lending in Ohio, the term "short term loan" in the §1321.36(A) prohibition must be given its common meaning, at least covering a 14-day loan like that to defendant. Elsewhere from §§1321.35 to 1321.48, the definition at §1321.35(A) makes sense. Even if this Act does not apply, no other Ohio statute authorizes the business of lending by one-payment, short term loans. The result in this case is the same.

The additional grounds for objection are moot because the mortgage loan law does not apply, but will be addressed.

The Court rejects the objection to the magistrate's denial to plaintiff of 25% per annum interest under O.R.C. §1321.571. After the meaning of "annual percentage rate" in the mortgage loan law was changed to become nearly identical with "interest rate," §1321.571 no longer was an "alternative" to §1321.57(A), but its implicit repeal. The later reenactments of the 21% cap on interest at §1321.57(A), each with a "notwithstanding" clause, resurrected §1321.57(A) and repealed by implication the then patently inconsistent §1321.571. To ascribe to §1321.571 surviving vitality as a true alternative to the reenacted §1321.57(A) would require that the calculation of the 25% "annual percentage rate" again include more than interest. The courts that cite §1321.571 to authorize 25% as an "interest rate" do not consider the mandatory preemptive effect of "notwithstanding" clauses, the legislative history of these sections, and the important difference between "interest rate" and "annual percentage rate" under the law and behind the enactment of §1321.571.

The objection to the magistrate's denial of the 5% default charge has no merit. Section 1321.57(L) does not allow these charges on "total of payments" as written into this

J. 241
P. 2201 C

loan. The possibility that §1321.57(L) could be read to allow lenders a 5% surcharge not only on a fractional installment, but on *entire loans*, reinforces the high improbability that the legislature remotely anticipated for this Act to allow one payment loans like this one.

~~The Court agrees with the magistrate's reluctance to expand grounds for check~~
collection charges under O.R.C. §1321.57(K). Section 1321.57(H)(1) prohibits charges not specifically enumerated. Provisions in usury statutes that limit charges mark "the boundary beyond which the lender may not go" and are strictly enforced. *Capital Loan & Sav. Co. v. Biery* (1938), 134 Ohio St. 333, 338. "Equitable interpretation" is not a tool to enhance profits for lenders already receiving among the highest fees and interest in Ohio.

This Court has no opinion whether one form of lending or another should be permitted in Ohio. It was the legislature and voters, not the courts, that closed the door on payday loans and established a new law to exclusively regulate the business of short term lending in Ohio. This court will 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. That other lenders are doing what plaintiff has done here or that plaintiff has had success receiving contract interest in unopposed appeals from default judgments does not legitimate this payday loan as a mortgage loan. This Court will not elevate form over substance. Objections are overruled.



JUDGE

Copy: Parties

STATE OF OHIO, LORAIN COUNTY, ss., - THE ELYRIA MUNICIPAL COURT **FILED**

MAGISTRATE'S DECISION

2011 MAR 25 10:34

**OHIO NEIGHBORHOOD FINANCE, INC.
DBA CASHLAND**

Plaintiff

CLERK OF
ELYRIA MUNICIPAL COURT

VS

CASE NO. 09CVF01488

RODNEY SCOTT

Defendant

This matter was referred back to the Magistrate for hearing and decision after objection had been filed to a prior magistrate's decision recommending only part of the relief in the complaint. A full evidentiary hearing was to be had on the merits and an instruction was made to determine the applicable law. Though Defendant is in default of an appearance, evidence was taken on all issues pursuant to Buckeye Supply Co. v. Northeast Drilling Co. (Wayne 1985), 24 Ohio App.3d 134, citing Dallas v. Ferneau (1874), 25 Ohio St. 635.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff Ohio Neighborhood Finance, Inc., dba Cashland ("Cashland"), filed this action to collect on a loan that "Defendant has failed to discharge... by payment or other satisfaction although the same has been demanded by the Plaintiff." Under the parties' loan contract, Cashland gave Defendant \$500 on December 5, 2008, in return for his promise to pay the full amount back by a \$545.16 debit against his checking account fourteen days later on December 19, 2008. This reflects an annual percentage rate of 235.48% under the federal Truth in Lending Act ("TILA"), based on a \$30.00 "loan origination charge," 25% per annum interest over 14 days, and a \$10.00 "credit investigation fee." The TILA disclosure box states that contract also involved a late charge of the greater of \$15 or 5% of the "total of payments," that is, \$27.20, and a \$20.00 "check collection charge." Cashland seeks only the lesser late charge, but asks for the check fee, though no check was written by Defendant. The fee is for trying to electronically debit his checking account on his payday. Cashland's witness admits that it still basically operates as when licensed as a "payday" lender, though the Payday Loan Act was repealed and replaced with a Short Term Lender law in 2008. Cashland is not licensed under that Act, but instead as a "Second Mortgage" lender. Cashland contends this Second Mortgage law permits its payday loan business to continue as before¹ though Cashland now calls its payday loans "Short Term Finance Loans" instead. Its witness says the loans are now scheduled even more closely than before to

¹ Cashland's witness testified that all of its loans are short term, one payment "payday" style loans like this one, though Cashland still is licensed as a check-cashing business and operates as a pawnbroker of gold and silver as well.

Mar. 28. 2011 1:04PM Clerk of Elyria Municipal Court
Case filed at No. 9084 P. 27

be "due back on paydays" of borrowers. For this fourteen-day loan of \$500, Cashland claims \$107.41 in charges and fees, plus interest at 25% per annum -- less credit for Defendant's \$35 payment.

The Ohio Supreme Court authorizes courts to *sua sponte* scrutinize any "instrument for the payment of money, by which the maker has agreed to pay usurious interest at a stipulated rate" and as appropriate to reduce any improper interest charges "to the legal rate." Gonde v. Sutton (1876), 29 Ohio St. 587, 596-597 ("on its own motion"). "Interest" in Ohio is generally defined in broad terms as "the compensation allowed by law, or fixed by the parties, for the use, detention, or forbearance of money or its equivalent." 61 OH. JUR.3d, *Interest and Usury* § 1 (1985). In most loans, any amount imposed as a condition of a loan, like the origination fees and investigation charges here, is properly regarded as "interest" as well. Charges by any other name added by contract, even after maturity of a loan, are also "interest." Lafayette Ben. Soc., v Lewis (1835), 7 Ohio pt 1 p 80; Hackett v. Kripke (Lucas 1939), 62 Ohio App. 89, 15 Ohio Ops. 445 (syllabus ¶1). The federal TILA tracks the conventional definition of pre-maturity interest, including virtually every charge imposed as a condition of credit, under the label of "finance charge," that is "the dollar amount the credit will cost you," 12 C.F.R. §§226.4(a) and 226.18(d), and as part of calculation of the "annual percentage rate," *i.e.*, the "cost of your credit on a yearly basis." §226.4(e). The TILA "annual percentage rate" disclosure of the pre-maturity cost of Defendant's loan here is 235.48%, raising a red flag for the potential of usury.

Cashland justifies its interest rate and charges based on its registration under Ohio's Second Mortgage Loan Act, R.C. §§1321.51, *et seq.*, often described these days as the "Mortgage Loan Act" ("MLA"). This Act is indeed one of the statutory exceptions to the general R.C. Chapter 1343 limits on interest in Ohio and is referenced in the loan contract with Defendant. Yet the alert judiciary has never permitted the labels used or even the form of a transaction to control over its substance when interest and the possibility of usury is at hand, as stated by our court of appeals:

The cupidity of lenders, and the willingness of borrowers to concede whatever may be demanded or to promise whatever may be exacted in order to obtain temporary relief from financial embarrassment, as would naturally be expected, have resulted in a great variety of devices to evade the usury laws; and to frustrate such evasions the courts have been compelled to look beyond the form of a transaction to its substance, and they have laid it down as an inflexible rule that the mere form is immaterial, but that it is the substance which must be considered. No case is to be judged by what the parties appear to be or represent themselves to be doing, but by the transaction as disclosed by the whole evidence, and if from that it is in substance a receiving or contracting for the receiving of usurious interest for a loan or forbearance of money, the parties are subject to the statutory consequences, no matter what device they may have employed to conceal the true character of their dealings. Every species of contrivance in the modification of any loan or contract, for the purpose of evading the statute, being cases within the mischief, are also within the remedy. Usury is a moral taint wherever it exists, and no

subterfuge shall be permitted to conceal it from the eye of the law; this is the substance of all the cases, and they only vary as they follow the detours through which they have had to pursue the money lender.

Central United Nat. Bank v. Allshouse (Summit App. 7/19/33), 15 Ohio Law Abs. 711, 1933 WL 2424, at *2 (emphasis added) (citations omitted). This Court properly evaluates the legitimacy of Defendant's insistence that a law principally enacted to cover mortgages covers the short term, one payment transaction between the parties here to allow the interest and charges assessed.

I. Cashland's short-term, one payment loans are not governed by the Second Mortgage Loan Act but by Ohio's Short Term Lender Act.

That Cashland may be registered as an MLA lender does not mean that this loan is authorized by the MLA.² Cashland's witness described Cashland's practices and procedures associated with this loan as basically the same as when licensed as a check cashing business making "payday" loans under former §§1315.39, *et seq.* That statute, enabling check-cashing businesses to make very short term, one payment loans tied to impending paychecks or bank deposits commonly known as "payday" loans, was repealed by Sub H.B. 545 (eff. 9/1/08). In its place, the General Assembly enacted R.C. §§1321.35 through 1321.48 to officially authorize a special "short term loan" law. OHIO CONSUMER LAW, §23:02 (West 2010). This legislative repeal of payday lending in Ohio was placed on the ballot by the payday loan industry and then ratified by referendum as Issue 5 by Ohio voters on November 4, 2008, to ensure that "borrowers would have at least 30 days to repay the loan" and "the maximum interest rate would be a 28% annual percentage rate" expressly defined as the broad, federal "annual percentage rate" under the Truth in Lending Act. **Cashland contends that the mantle of its registration as a mortgage loan lender authorizes the same payday loans expressly disallowed by the General Assembly and the voters of Ohio.**

This contention is not persuasive -- contradicted not only by the language of the MLA contemplating payments over time on all loans but by the legislative history of the MLA, Small Loan Act, and Payday Loan laws in Ohio, particularly the 2008 legislative and electoral substitution of a new "Short Term Loan Law" for the payday loan laws. Using an MLA registration as a pretext to make these loans is an evasion of the Short Term Loan law. Without proof of Cashland's registration under the Short Term Lender Law, Cashland could not make any short-term loans in Ohio, without high interest or charges being usurious and unenforceable as matter of law.

² See e.g., Glouster Community Bank v. Winchell (Athens 1995), 103 Ohio App.3d 256, 261-262 (bank selling mobile home titled in its name not exempt as financial institution from consumer usury laws at R.C. Chapter 1317).

A. The language of the MLA does not authorize single payment, short-term loans

The language of the MLA is replete with references to “monthly installments,” “scheduled payments” and “balances outstanding from time to time.” Nonetheless, Cashland argues that this law, primarily enacted for mortgage loans, authorized the two-week, lump sum loan here, just because Cashland calls it “interest-bearing.” Cashland asks this Court to ignore the forest for the trees.

Analysis of a statute begins with its language. State ex rel. Gelesh v. State Med. Bd. of Ohio (2007), 172 Ohio App.3d 365, 370. Cashland focuses on the wording of the MLA pertaining to the two different methods permitted for calculating interest. Interest in an MLA loan may be structured as “precomputed” or “interest-bearing.” R.C. §1321.57(A). Cashland compares the presence of language in the statute that says that loans with interest which is “precomputed” must be “repayable in monthly installments” to the absence of that same language to describe “interest-bearing loans.” Cashland extrapolates from this difference that any loan, including the payday style one here, just by structuring it as “interest-bearing,” need not be even a month, week or daylong or have installments. However, “words and phrases in a statute must be read in context of the whole statute.” Commerce & Industry Ins. Co. v. City of Toledo (1989), 45 Ohio St.3d 96, 102. The language of the statute when read carefully and in context does not support Cashland’s contention, but rather describes all loans to involve installments or balances carried with monthly payments.

A “precomputed loan” is defined at R.C. §1321.51(G) as one “in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all **scheduled payments** will be made when due.” (emphasis added). Section § 1321.57(D)(1) adds unequivocally that all of these loans “shall be repayable in monthly installments,” restricted in timing with amounts to be essentially uniform. Under §1321.51(I), interest is computed on “periodic balances” through “payments” made in relation to “each monthly installment period of the loan contract.” Cashland concedes that this method of calculating interest would preclude loans like the one to Defendant here. Yet it is difficult to conceive a loan more clearly within the definition of “precomputed” than the one here. A fourteen-day loan made on the premise that the borrower will have no money until a “payday,” resulting in a bank deposit, at which time the bank account will be tapped, and with all of the interest and charges “computed in advance” and included on the very face of the contract “on the assumption that [the only] **scheduled payment**[] will be made when due” cannot be construed as anything else but precomputed, as a matter of law. Calling a precomputed loan like this one by any other name does not render the loan less “precomputed.”

The other method of computing MLA interest is called "interest-bearing." This means, by the definition given at R.C. §1321.51(F), that the "debt is expressed as the principal amount" only, with interest "computed, charged, and collected on unpaid principal **balances outstanding from time to time.**" (emphasis added). This language is repeated at §1321.57(C)(1)(a), which Cashland cites as its express authority that "a single installment loan is permitted." Cashland ignores that "balances" are expected to be "outstanding" not "over time," but "from time to time." "[W]ords in statutes should not be construed to be redundant, nor should any words be ignored." East Ohio Gas Co. v. Public Utilities Com'n of Ohio (1988), 39 Ohio St.3d 295, 295. Each "time" in the phrase, "from time to time," is thus to be accorded meaning. See Southwestern Sur. Ins. Co. v. Douglas (Okla 1921) 198 P. 334, 340. After all, registrants by §1321.57(C)(1)(c) must ensure that unpaid interest in interest-bearing loans "be paid from the proceeds of **subsequent payments.**" (emphasis added).

Cashland likewise disregards other statutory language manifesting the legislative expectation of recurring "monthly" payments with interest-bearing loans, coordinating the repayment terms for interest-bearing loans with those for precomputed ones. Under §1321.57(C)(1)(b), MLA registrants in interest-bearing loans may contract for interest without regard to when borrowers actually make their payments, but rather "from the date of the loan to the **first scheduled payment due date**" and thereafter "for each **succeeding installment period** from the scheduled payment due date to the next scheduled payment due date." (emphasis added). Just as with precomputed loans, the duration of "the first monthly installment period" in an interest-bearing loan is defined by a month, that is, like precomputed loans where "the first installment period may exceed one month by not more than fifteen days," for interest-bearing loans "[i]nterest may be charged to extend **the first monthly installment period** by not more than fifteen days." R.C. §1321.57(C)(2)(a)(emphasis added).

No explanation is offered by Cashland for the absence from this loan of a "first monthly installment period," a schedule for "subsequent payments" or "succeeding installment periods." Nor is there a framework for "unpaid principal balances [to be] outstanding from time to time." Rather than telegraphing a legislative message to approve one payment, short-term loans, the language of the statute describes all loans, both precomputed and interest-bearing, as with multiple payments.

B. Short-term, one payment "payday" loans like this have always been and still are covered by specially targeted legislation as part of an overall scheme of usury regulation

The Mortgage Loan Act is only one part a larger scheme of laws in Ohio governing interest and usury for different types of transactions. Laws governing short term, one-payment loans tied to

borrowers' "paydays" are, and have always been, another important part of this scheme. These and other usury laws were enacted and continue to serve very different purposes. To hold the MLA 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 MLA, and outright undermine the Short-Term Lending Loan recently enacted to specifically cover loans like this. Cashland's use of the MLA for a loan like this one is an evasion of the Short Term Loan Act.

Any review of the usury laws of Ohio must begin with R.C. §1343.01(A), "Ohio's general usury statute." Capital Fund Leasing, L.L.C. v. Garfield (Cuyahoga 1999), 135 Ohio App.3d 579, 581. That section has always set a maximum rate of interest to which parties may "stipulate" in "a bond, bill, promissory note, or other instrument of writing for the forbearance of money." That maximum rate today is eight percent per annum. Interest under a general usury ceiling like this considers all charges required by a contract to be paid, before, for, or after, for the period of time that the money is used, regardless of the name given the charge. Allshouse v Bank & Trust Co. (Summit C.P. 1932), 30 N.P.(NS) 17, *affirmed by* (Summit 1933) 15 Ohio Law. Abs 711. This maximum rate applies to every loan unless the creditor proves "that the statute does not apply." Hudson & Keyse, L.L.C. v. Yarnevich-Rudolph (Jefferson App. 11/29/10), No. 09 JE 4, 2010 WL 4927616, at *5. Of course, when "specific language" of other statutes apply and authorize higher rates, rates that comply with those sections "are not subject to the limitations imposed by R.C. 1343.01 or the general usury statutes." AVCO Financial Services v. Smith (Franklin 11/24/87), No. 87AP-748, 1987 WL 26345.

One of the earliest enacted exceptions³ to Ohio's general usury laws covered loans exactly like the present one, then labeled a "salary loan." This type of loan has been around since ancient times.⁴ "The practice of salary selling involved a worker taking a loan a week before his paycheck and then repaying the loan by handing over the paycheck when it arrived." Faller, "Payday Loan Solutions: Slaying the Hydra," 59 Case W. Res. L. Rev. 125, 150 (2008). To avoid charges of violating the interest caps of the general usury laws like R.C. §1343.01, lenders fabricated "a variety of thinly veiled disguises and sham transactions" such as "phrasing the contract as a purchase or assignment of future wages, rather than as a loan." Graves & Peterson, "Predatory Lending and the Military: The Law and

³ Revised Code §1343.01(B) itself has several exceptions to the 8% usury ceiling, including unsecured loans payable in a single installment. In contrast, the usury laws discussed here regulate those in the business of making these loans.

⁴ According to one law review article, "pledging to pay one's earnings in the immediate future in exchange for money today" is a practice dating back to "our earliest recorded civilizations," which was banned by early Roman Law but when left unchecked has played a part in significant historical events of social upheaval. Graves, "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns," 66 Ohio St. L.J. 653, 665 (2005).

Geography of 'Payday' Loans in Military Towns," 66 Ohio St. L.J. 653, 671 (2005). These "high-cost wage-based" loans, "very similar to today's payday loans," were regarded as worsening financial situations of borrowers, leading "working class people in the eastern United States" to create the term "loan shark" to describe their lenders. *Id.* at 670. Little doubt exists that "salary lenders, the nation's first loans sharks, engaged in essentially the same business model as today's payday lenders."

Peterson, "Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing," 92 Minn. L. Rev. 1110, 1119 and at fn. 28 (2008).

In 1911, by enacting G.C. §§6346-1, *et seq.*, the Ohio General Assembly first passed statewide legislation that required licensing and regulated the interest rates and charges as well as the business practices of lenders "purchasing or making loans upon salaries or wage earnings." 102 O.L. 469 (prefatory language to 1911 SB 52). Though the rates allowed these lenders were still as high as three percent per month, §6346-5(a), these laws sought "to prevent and punish" "[t]he extortion practices by a class of money lenders" which was "a matter of common knowledge." Cain v. People's Salary Loan Co., 24 Ohio C.D. 115, 1912 WL 709, at *1, affirmed, 88 Ohio St. 550 (1913). None other than the Ohio Supreme Court recognized the need for this type of legislation because the "class" of borrowers who receive these payday loans "comprises the most needy and improvident, and consequently the most susceptible to fraud and extortion." Sanning v. City of Cincinnati (1909), 81 Ohio St. 142, 156 (municipal regulation of salary loans constitutional). Still, problems persisted with wage-based loans after this regulation. See Dunn v. State (1930), 122 Ohio St. 431, 437 ("protecting needy borrowers from the extortion of purchasers of salaries.") Enactment of new "small loan laws" was demanded, with higher interest rates and administrative charges supposed to attract "respectable private lenders into the market for costly consumer loans, creating healthy competition and driving the salary lenders out of business." "Predatory Lending," 66 Ohio St. L.J. at 672.⁵

In 1943, Ohio's General Assembly in one fell swoop repealed all of the laws allowing this type of lending, G.C. §§8624-70, eff. 7/16/43, and substituted Ohio's current "Small Loan Act."⁶ G.C. §§8624-50, *et seq.*, now codified at R.C. §§1321.01, *et seq.* Any "money, credit, goods or things in action," valued at \$300 or less given "as a consideration for any sale or assignment of, or order for, the

⁵ See also Peterson, "Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing," 92 Minn. L. Rev. 1110, 1120-1121 (2008); Fuller, "Payday Loan Solutions: Slaying the Hydra," 59 Case W. Res. L. Rev. 125, 150 (2008). Woolston, "Neither Borrower Nor Lender Be: The Future of Payday Lending in Arizona," 52 Ariz. L. Rev. 853, 887, fn. 283 (Fall 2010).

⁶ The term "Small Loans Act" [sic] was first used to describe the earlier laws, §§6346-1 to 6346-7, covering both wage and salary lending and loans secured by chattels. See Merchants Finance Co. v. Goldweber (1941), 138 Ohio St. 474.

payment of wages, salary, commissions, or other compensation for services" became governed as a small loan. G.C. §8624-65(a). *See preface to 1943 HB 49, 120 v. 75.* Licensing was required of anyone "in the business of lending money" of \$1000 or less who contracted for or received interest or charges above the ceiling of the general usury laws. G.C. §8624-51(a). These lenders could charge the same 3% per month as former salary lenders on loans up to \$150, 2% per month for loans up to \$300, but no more than 8% per annum above that. The key was that "repayment of the amount lent" had to be "in substantially equal installments... at approximately equal periodic intervals of time." G.C. §8624-62(a). That is, Ohio's Small Loan Act was enacted with the manifest purpose of abolishing the type of short term, lump sum loans as made to Defendant here, in favor of installments spread out over time. Amendments have been made to this law since its creation, including the structuring of loans as "precomputed" and "interest-bearing" by 1981 H.B. 134, eff. 7-14-81, but nothing in any amendment remotely suggests that this original purpose for enactment of the Small Loan Act changed.

A half-century after payday loans were abolished by the Small Loan Act, the payday loan was legislatively resurrected in 1995 in Ohio. Lenders no longer had to pretend to purchase wages or salaries of borrowers, which continued to be prohibited in that form. R.C. §1321.32 ("assignment of, or order for wages or salary" invalid). In the modern age, the ubiquitous checking account became the target. The General Assembly enacted a "Check-Cashing Lender Law," R.C. §§1315.35 to 1315.44, by 1995 HB 313, eff. 12/5/95, popularly known as "the Payday Loan Act." *See Checksmart v. Morgan* (Cuyahoga App. 1/16/03), No. 80856, 2003 WL 125130, at *1; *see Faller, "Payday Loan Solutions: Slaying the Hydra,"* 59 Case W. Res. L. Rev. 125, 127, fn. 7 (2008) (Ohio Dept of Commerce using this term); *see also, generally,* Fiscal Notes for 2008 HB 545. Businesses already licensed under R.C. §1315.21 to cash checks for the public now could receive separate licenses to make cash advances to their customers for up to \$500 (which later became \$800), at 5% interest per month, repayable by lump sum, without regard to installments. R.C. §1315.39. The industry boomed⁷ as it has throughout the ages when condoned. Controversy also ensued, with complaints⁸ very similar to those raised in 1943, the turn of the last century, and before that.

⁷ In two years, payday loans increased from 41 to between 95 and 100 million loans and revenues from \$2.4 billion to between \$4.0 and \$4.3 billion. 64 Consumer Fin. L.Q. Rep. 145, 276 (2010), *citing* "Unsafe and Unsound: Payday Lenders Hide Behind FDIC Charters to Peddle Usury." Consumer Federation of America, Mar. 2004.

⁸ "In 2006, the Center for Responsible Lending (CRL) published its report on payday lending practices in which it contended, contrary to industry claims, that the majority of payday loans were renewals of previous loans which borrowers were unable to repay, rather than one-time, emergency loans repaid on the due date." 64 Consumer Fin. L.Q. Rep. 145, 276 (2010). *See* 5/7/08, Press Release of Atty Gen. Dann, <http://www.rtoonline.com/images/OhioAgRecs/paydayLending050708.pdf> ("well-documented abuses" in "short-term loans that cause long-term financial ruin.") Cashland's witness testified that as soon as the Defendant here had "paid one [loan] off he got another."

Then in 2008, exactly as occurred in 1943 by the Small Loan Act supplanting the salary lending laws, the Payday Loan Act was repealed simultaneously with the introduction of a substitute usury law, specifically intended to regulate the same lenders and lending practices. Effective September 1, 2008, Sub H 545 “[r]epeal[ed] the current Check-Cashing Lender Law in its entirety and enact[ed] the bulk of the repealed law’s provisions with changes in a new Short-Term Lender Law.” See Bill Summary of 2008 H 545, OLSC, http://www.legislature.state.oh.us/analysis.cfm?ID=127_HB_545&ACT=As%20Introduced&hf=analyses127/h0545-rh-127.htm. The law was “bipartisan legislation” intended as “a major step toward protecting Ohio consumers who are already struggling with debt by strictly regulating payday lenders and lowering the maximum interest rate for short-term loans.” OH Gov. Mess. 6/2/08, Annotation to 2008 H 545.

This new “Short-Term Lender Law,” R.C. §§ 1321.35 to 1321.48, prohibits any lender from engaging “in the business of making short-term loans to a borrower in Ohio... without first having obtained a license” under the Act, R.C. § 1321.36(A). The Act covers not only licensed businesses but those “required to be licensed” to make short-term loans.⁹ See R.C. § 1321.47. The Act appears tailored to address the specific problems perceived by some with payday loans under the prior Act, prohibiting short term loans from being less than thirty-one days in duration, having interest rates above a 28% “annual percentage rate” -- defined expansively and with express reference to the Truth in Lending Act -- and limiting the number and refinancing of loans and the remedies of lenders on returned checks. R.C. §§ 1321.35(C), 1321.39, 1321.40, R.C. § 1321.41. Moreover, lenders may not “indebt the borrower... for an amount that is more than twenty-five per cent of the borrowers gross monthly salary.” R.C. § 1321.41(E). No clearer expression can be imagined of legislative intent to regulate short term, one-payment loans to be paid from checking accounts and connected with paydays.

Any doubt about the intent to turn “payday lenders” into “short term lenders” was removed on November 5, 2008, when the voters of Ohio by referendum approved the language on the ballot of Issue #5 to end payday lending in Ohio as then existed and substitute requirements that “**all short term lenders, including check cashing lenders,**” described on the ballot as “payday lenders,” be required to obey the “limitations” of a new Short-Term Loan law. (emphasis added). Under Ohio

⁹ The words, “short-term loan,” at R.C. § 1321.36(A) must be accorded their plain meaning, that is, any loan for a “short term.” If restricted to the definition at § 1321.35(A), which states that “[s]hort-term loan” means a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code,” then the first line of § 1321.36(A) -- “No person shall engage in the business of making short-term loans to a borrower in Ohio... without first obtaining a license” -- would be circular and have no meaning. That is, only those already licensed to make these loans or already making loans compliant with the Act would be subject to a prohibition against making loans without a license. “In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law.” 85 OH. JUR.3D, *Statutes* §228. Cashland’s employees calling their own loan product a “short-term finance loan” exemplifies the commonness of this phrasing.

Const. Art. II §a, the referendum submitted this issue “directly to the people that they ordain a law set forth therein, or that they repeal a law already enacted.” 56 Ohio Jur.3d *Initiative & Referendum* §2. It gave “the people the final decision.” State ex rel. LetOhioVote.org v. Brunner (2009), 123 Ohio St.3d 322, 328 (citation omitted). Thus, by vote of the legislature and the people of Ohio, payday lending in Ohio as then existed was to end, with lenders inclined to continue making loans of that type “subject to [new] limitations” under only one, specific new governing law.

Yet, Cashland argues that buying a license to make loans as a “second mortgage branch” registered under §1321.51 *et. seq.* is -- and by implication always has been -- alternate authority to make payday loans. After all, Cashland’s loans and practices have changed little from being licensed as “check-cashing lender” to “second mortgage loan lender” and its witness says its current loans are now more closely connected to borrowers’ paydays than before. Cashland seems to believe that the 1995 Payday Loan Act from its inception was little more than a redundancy to the MLA and its 2008 repeal was just an inconvenience, because it could have made payday loans all along as a MLA lender, just perhaps not at the same level of profit.

At its outset in 1965, the MLA was named the “Second Mortgage Security Loan Act” for good reason. It was enacted solely to regulate any lender in Ohio that “advertises, solicits, or holds himself out as willing to take as security for a loan on a borrower’s real estate which is other than a first lien.” 131 v. 439, eff. 11/1/65, codified at R.C. §1321.52. Like the Small Loan Act, each loan had to be “repayable in substantially equal installments.” 131 v 444, eff. 11/1/65, codified at R.C. §1321.57. Despite amendments over the years that eventually allowed its registrants to make other loans, including unsecured ones, the Act still governs second mortgage lending in Ohio as originally intended and is often referenced by its original name.¹⁰ Since 1989, even first mortgage loans have been allowed. 1989 HB 497. As recent as January 1, 2010, major new conditions only covering loans secured by home mortgages were added to the MLA. See 2009 HB 1, eff. 10/16/09, amended by 2009 SB 125, §5, eff. 12/28/09, to be applicable 1/1/10. In other words, this usury law was first intended to regulate and remains primarily focused on large, long-term installment loans like mortgages. Nothing in the legislative history or the plain words of the statute remotely intimates any change of intention by the legislature. Cashland surely cannot be arguing that the MLA was intended or can be conceivably interpreted to allow its lenders to write loans secured by home mortgages to be repayable in full in a matter of days by lump sum. That would be a necessary effect of agreeing with Cashland’s analysis.

¹⁰ Cashland’s registration of the Elyria office with the State of Ohio is described as a “Second Mortgage Branch Office.” Westlaw still lists the relevant sections of the Revised Code as “Second Mortgage Security Loans.”

Nor is Cashland persuasive that the availability of an option to calculate interest on these loans according to the "interest-bearing" method makes any difference. The 1979 amendments authorizing loans to be structured as "interest-bearing" as well as "precomputed" under R.C. §1321.57(A) merely incorporated "the traditional way to compute interest" most commonly found in mortgages, where loan payments are applied first to unpaid charges, then interest, and finally the principal balance. Elizabeth Renuart & Kathleen E. Keest, *The Cost of Credit: Regulation, Preemption, and Industry Abuses* §4.5.2, *et seq.*, at 149-150 (3d ed. 2005). Unsecured loans were not even allowed by the MLA at that time. See §1321.52 under 1979 HB 511, eff. 9/28/79. That the General Assembly was actually contemplating long-term loans with this amendment, particularly "interest-bearing loans," is evidenced by that same amendment's removal of the sixty-month limit on the duration of loans at §1321.57(A) and the addition of a requirement that "interest-bearing" calculations always be used to determine rebates for loans in excess of sixty one-months. 1979 H 511, eff. 9/28/79, *codified* at §1321.51(J). Because the Small Loan Act shortly afterwards also adopted the traditional "interest-bearing" method to calculate interest, 1981 H 134, eff. 7/14/81, to validate Cashland's argument would seem to turn that law also into authorizing payday loans, despite the historical record of its enactment to abolish them.

The mandate of legislative interpretation is to read "related and co-existing statutes" on the same subject matter "*in pari materia*, construing them together" and "give such a reasonable construction as to give proper force and effect to each and all such statutes." United Tel. Co. of Ohio v. Limbach (1994), 71 Ohio St.3d 369, 37 quoting Maxfield v. Brooks (1924), 110 Ohio St. 566 (emphasis added). Their "interpretation and application ... must be viewed in a manner to carry out the legislative intent" of each statute and a court "must harmonize and give full application to all such statutes unless they are irreconcilable and in hopeless conflict." Limbach, 71 Ohio St.3d at 37 (emphasis added). Thus, before its repeal in 2008, the Payday Loan Act had to be recognized for its separate purpose from but harmonized with the Small Loan Act and the MLA, just as today the Short Term Lender Law must be given "proper force and effect" in the context of these other usury laws. This Court cannot ignore these principles to allow Cashland to turn these separate, very focused usury laws into redundancies while corrupting the MLA into a payday or Short-Term lending law.

C. Without a Short Term Lender license, Cashland's interest is limited by R.C. §1343.01.

The substance of this transaction, not its form, must control, according to our court of appeals. Central United Nat. Bank, 1933 WL 2424, at *2. This fourteen day, one payment loan, tied to payment by an automatic withdrawal from Defendant's bank account on a payday, cannot as a matter of law be

an MLA loan. The only legislative authority for a loan like this in Ohio is now under the Short-Term Lender law. Cashland is not registered under that Act, though §1321.36(A) prohibits short-term loans without that licensing. By the preponderance standard of proof in civil cases, Cashland's MLA license was and is more likely than not a subterfuge to evade this usury law.

The General Assembly did not provide a self-effecting remedy for failing to register as a short-term lender, such as found at §1321.02. Thus, Cashland may still recover actual damages for the money lent, but is limited to the maximum interest rate of eight percent per annum under the general usury law of Ohio, §1343.01. All other charges, being conditions of Defendant's credit, are subsumed within that rate of interest. No independent authority exists for these other charges. After credit for the \$35 in payments, judgment should be granted for \$465 plus 8% interest from 12/05/08 plus costs.

II. The interest and charges in this loan are usurious even under the MLA.

Even if the Second Mortgage law covered this loan, the interest and charges here violate that Act. This analysis explains in part the Magistrate's original denial to Cashland of requested charges.

A. Contracting for an "interest rate" over 21% under the MLA is usurious

Revised Code §§1321.57 and 1321.571 appear to have inconsistent provisions as to the interest allowed in MLA loans. Section 1321.57(A) unambiguously sets 21% as the maximum rate of interest that a registrant may contract for and receive "notwithstanding any other provisions of the Revised Code." However, §1321.571 follows to allow as an "alternative" to the 21% under 1321.57(A), interest "at any rate or rates agreed upon... but not exceeding an annual percentage rate of twenty-five percent." (emphasis added). These provisions may not be reconciled in their present form.

Only one court in Ohio has thoughtfully examined this issue. The Franklin County Municipal Court -- also in a default proceeding -- observed the apparent conflict presented by "the preliminary language of the two statutes," finding it "impossible to choose between these two statutory interest limits." Ohio Neighborhood Finance Inc. v. Hill (Franklin Mun. 7/30/10), No. 2010 CVF 010114. This was not an instance where "ambiguity in the language" existed to allow a conclusion "that one enactment trumps the other." *Id.* The court therefore considered the legislative history of each statute. Revised Code §1321.57 has been amended six times, the last time being 2009 H 1, eff. 10-16-09, after §1321.571 was last amended in 1994 by 1994 H 695, eff. 9-29-94. Each time, the General Assembly left the exclusivity "notwithstanding" language of §1321.57(A) intact. That municipal court observed:

[T]he General Assembly had before it R.C. §1321.57(A), was presumptively aware of the apparent conflict presented by the existence of R.C. §1321.571, and chose nevertheless to re-enact the language "notwithstanding any other provisions of the Revised Code..."

Under the circumstances and given the timing of the relevant acts of the General Assembly, the court can only conclude that the General Assembly intended R.C. §1321.57 to prevail "notwithstanding any other provision of the Revised Code," even over the alternative rate set out in R.C. §1321.571.

The Magistrate agrees with the analysis of that municipal court. In Ohio such "notwithstanding any other provision" language in a statute has been held to be a "mandate... expressly intended to preempt conflicting... law." Perkins v. Ohio Dept. of Transp. (Franklin 1989), 65 Ohio App.3d 487, 500. No less than the U.S. Supreme Court has stressed that "the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section," following lower courts that generally "interpreted similar 'notwithstanding' language ... to supersede all other laws," with "[a] clearer statement... difficult to imagine." Cisneros v. Alpine Ridge Group (1993), 508 U.S. 10, 18, 113 S.Ct. 1898, 1903 (citations omitted). Put another way, the use of "notwithstanding" language actually "eliminates conflict rather than creates it" with an otherwise inconsistent statute because "no other provisions of law can be held in conflict with it"; after all, "a conflict would exist only if both statutes included a prefatory 'notwithstanding' clause." Kidde America, Inc. v. Director of Revenue (Mo. 2008), 242 S.W.3d 709, 711 -712. Considering the effect of this strong language together with the legislative history, R.C. §1321.571 has been superseded by §1321.57(A).¹¹

Because the rate in that loan contract exceeded 21% per annum, the Hill court reduced interest on the loan to the default rate under R.C. §1343.03(A). Section 1321.56 requires this reduction:

The maximum rate of interest applicable to any loan transaction that does not comply with section 1321.57 of the Revised Code shall be the rate that would be applicable in the absence of sections 1321.51 to 1321.60 of the Revised Code.

¹¹ When first enacted, these two sections could be reconciled, because MLA "annual percentage rate" and "interest rates" were then defined very differently. When R.C. §1321.571 was enacted by 1981 H 526, eff. 2/11/82, as a "temporary" measure, second mortgage loans were about the only loans made under the MLA, the term "annual percentage rate" was undefined by the MLA, and the term "interest" included most fees and charges imposed by a registrant. See 1981 H 134 eff. 7/14/81. The maximum "interest rate" under §1321.57(A) had just been raised from 18% to 21%. *Id.* The legislative history shows that MLA terms were meant to gibe with the TILA: the MLA was amended "to delete disclosure requirements on loan terms and interest rates inconsistent with the federal Truth-in-Lending Act." Preface to 1979 H 511, eff. 9/28/79. As the term "annual percentage rate" at that time under the TILA meant the all-inclusive "cost of your credit as a yearly rate," 12 C.F.R. §226.18(e), when §1321.571 was enacted it was a true "alternative" to §1321.57(A), giving way on rates of interest, so long as the combined total of all interest, fees and charges did not exceed the 25% TILA APR ceiling. Thus, lenders charging lower fees to borrowers could charge higher interest -- subject to this overall APR limitation. "Annual percentage rate" when later defined by §1321.51(K) was parced to match the newer, narrower MLA definition of "interest" at the new §1321.51(E), excluding all charges but basic interest. The MLA APR under §1321.571 only then became identical with "interest rate." Thus, here the TILA APR is 235.48% but the MLA APR is 25%. As such, the language of §1321.57(A) cannot be reconciled with that of §1321.571.

That should be the result here as well. Cashland is limited to the eight percent per annum rate applicable by default under R.C. §1343.03(A) in 2008 and all other charges that either would be either interest or construed as interest because unauthorized under the law "in the absence of" the MLA should be stricken. After credit for \$35 in payments, judgment should be granted for \$465 plus 8% interest from 12/05/08 plus costs.

B. A "default charge" is usurious interest after maturity of this one payment loan

Revised Code §1321.57(L) allows parties to an MLA loan to contract to collect "a default charge on any installment not paid in full within ten days after its due date" with the "amount of the default charge... not [to] exceed the greater of five per cent of the scheduled installment or fifteen dollars." (emphasis added). The loan papers here have this language as well, but describe the amount owed as five percent of the "total of payments" instead of a "scheduled installment," deviating from wording of the statute. Under the plain language of the statute, Cashland cannot recover these fees.

The statute references its default charges as applying only when an "installment" is late. "Installment" means a "partial payment of a debt" and "different portions of the same debt payable at different successive periods as agreed." *Black's Law Dictionary* (5th Ed. 1979) 717. "Installment" is more generally defined as "one of the portions into which a sum of money or a debt is divided for payment at set and usu. regular intervals." *Webster's Third New Int'l Dictionary* 1171 (unabridged ed. 2002). No "installment" is involved in this short term, one payment loan.

This is not a loan like the second mortgages for which the MLA was enacted, with payments extending over months or years. Absent also are the periodic, affordable sums for which a statutory late charge of 5% could be justified as a token percentage to cover administrative costs and encourage future adherence to a schedule. Here, as a percent of the "total of payments," this is a five percent charge on the entire loan, that is, principal, interest, and fees, which as an interest rate is astronomical.

Construing the statute to allow this charge in this context would likely encourage more MLA registrants to require more borrowers to sign one payment, short term loans – especially much larger loans -- at the prospect of receiving an extra five percent upon a breach. Only after the breach, that is, after five percent more is added to the debt, would a lender be magnanimous as to installment plans. Cashland's witness explained that it too allows payment plans exactly like this, after maturity.

Without a reasonable basis to support late charges on a total balance owed, "creditors are usually denied late fees after acceleration or maturity." In re Market Center East Retail Property, Inc. (Bkrcty.D.N.M.,2010), 433 B.R. 335, 366. See also In Hernandez (Bkrcty. S.D. Ohio 2003), 303 B.R. 342, 348 (5% based on the entire amount due was overreaching and unreasonable).

C. The MLA and loan contract did not permit "check collection charges" to be assessed on ACH electronic transactions from Defendant's checking account.

Under R.C. §1321.57(K), a MLA registrant "may charge and receive check collection charges not greater than twenty dollars plus any amount passed on from other depository institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason."

Cashland requests the full fee here, though no actual check was received from Defendant and presented for payment. Cashland's witness states that Cashland does not take borrowers' checks any more. Instead Cashland copies a blank check, returning it to the borrower, and uses the account number from the check to make an "ACH" or "automatic debt entry" on borrowers' accounts for payment pursuant to contract language that states: "You agree that we may initiate the ACH (as defined below)... on or after the Payment Date as payment under this Customer Agreement."

Although the contract also has terms that would allow "[i]n certain circumstances, such as for technical or processing reasons... [to] process your [ACH] payment as a check transaction" or even to "convert [a] personal check to an electronic check and electronically debit Your Bank Account for the face value of the check," each of these authorizations have an express contractual condition precedent that "you provide us with a personal check."

A "check" is defined as either a "draft, other than a documentary draft, payable on demand and drawn on a bank" or a "cashier's check or teller's check." R.C. §1303.03(F). A photocopy of a blank "personal check," not yet made payable to anyone or signed is a nothing, neither negotiable nor with any legal significance. Cashland may as well have hand-copied the information from the check onto a gum wrapper. The photocopied blank check, equivalent to Cashland's own notations on scrap paper, cannot reasonably be construed as a "check, negotiable order of withdrawal, share draft, or other negotiable instrument." Nothing in the MLA at present or even in the parties' contract¹² permits a failed ACH alone to be a basis for the "check collection charges" authorized by R.C. §1321.57(K).

In any case, no evidence was ever offered into evidence that an ACH ever occurred under this contract, such as a copy of notice from a bank of insufficient funds.

D. Cashland withdrew its demand for attorney fees.

The Magistrate previously denied attorney fees to Plaintiff as inconsistent with the specific language of the statute and the legislative history of the MLA. See discussion at OHIO CONSUMER

¹² The ACH authorization permits another ACH "for any applicable Check Collection Charge." No such charge is "applicable" unless the requirements of §1321.57(K) are satisfied.

LAW, §14:46 (West 2010). Because Cashland at the hearing withdrew all claims for attorney fees in this and all pending, related Cashland cases in this Court, the validity of its contractual provision and its demands for such fees in its complaint and motion need not be decided under the MLA or otherwise.

RECOMMENDATION

THE SHORT-TERM LENDER LAW, R.C. §§1321.35 *ET SEQ.*, NOT THE SECOND MORTGAGE LOAN ACT, R.C. §§1321.51, *ET SEQ.*, SHOULD BE APPLIED TO THE LOAN BETWEEN THE PARTIES. BECAUSE PLAINTIFF IS NOT LICENSED TO MAKE SHORT TERM LOANS, PLAINTIFF SHOULD BE GRANTED JUDGMENT OF \$465 PLUS 8% INTEREST PER ANNUM FROM 12/05/08 PLUS COURT COSTS.


Magistrate

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Copy to Attorneys Lim and Otto
Defendant



Effective: December 28, 2009

Baldwin's Ohio Revised Code Annotated Currentness
Title XIII. Commercial Transactions (Refs & Annos)
 Chapter 1321. Small Loans (Refs & Annos)
 Second Mortgage Security Loans
 → → **1321.51 Definitions**

As used in sections 1321.51 to 1321.60 of the Revised Code:

- (A) "Person" means an individual, partnership, association, trust, corporation, or any other legal entity.
- (B) "Certificate" means a certificate of registration issued under sections 1321.51 to 1321.60 of the Revised Code.
- (C) "Registrant" means a person to whom one or more certificates of registration have been issued under sections 1321.51 to 1321.60 of the Revised Code.
- (D) "Principal amount" means the amount of cash paid to, or paid or payable for the account of, the borrower, and includes any charge, fee, or expense that is financed by the borrower at origination of the loan or during the term of the loan.
- (E) "Interest" means all charges payable directly or indirectly by a borrower to a registrant as a condition to a loan or an application for a loan, however denominated, 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.
- (F) "Interest-bearing loan" means a loan in which the debt is expressed as the principal amount and interest is computed, charged, and collected on unpaid principal balances outstanding from time to time.
- (G) "Precomputed loan" means a loan in which the debt is a sum comprising the principal amount and the amount of interest computed in advance on the assumption that all scheduled payments will be made when due.
- (H) "Actuarial method" means the method of allocating payments made on a loan between the principal amount and interest whereby a payment is applied first to the accumulated interest and the remainder to the unpaid principal amount.
- (I) "Applicable charge" means the amount of interest attributable to each monthly installment period of the loan contract. The applicable charge is computed as if each installment period were one month and any charge for ex-

tending the first installment period beyond one month is ignored. In the case of loans originally scheduled to be repaid in sixty-one months or less, the applicable charge for any installment period is that proportion of the total interest contracted for, as the balance scheduled to be outstanding during that period bears to the sum of all of the periodic balances, all determined according to the payment schedule originally contracted for. In all other cases, the applicable charge for any installment period is that which would have been made for such period had the loan been made on an interest-bearing basis, based upon the assumption that all payments were made according to schedule.

(J) "Broker" means a person who acts as an intermediary or agent in finding, arranging, or negotiating loans, other than residential mortgage loans, and charges or receives a fee for these services.

(K) "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.

(L) "Point" means a charge equal to one per cent of either of the following:

- (1) The principal amount of a precomputed loan or interest-bearing loan;
- (2) The original credit line of an open-end loan.

(M) "Prepayment penalty" means a charge for prepayment of a loan at any time prior to five years from the date the loan contract is executed.

(N) "Refinancing" means a loan the proceeds of which are used in whole or in part to pay the unpaid balance of a prior loan made by the same registrant to the same borrower under sections 1321.51 to 1321.60 of the Revised Code.

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

(P)(1) "Mortgage loan originator" means an individual who for compensation or gain, or in anticipation of compensation or gain, does any of the following:

- (a) Takes or offers to take a residential mortgage loan application;
- (b) Assists or offers to assist a borrower in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs;
- (c) Offers or negotiates terms of a residential mortgage loan;
- (d) Issues or offers to issue a commitment for a residential mortgage loan to a borrower.

(2) "Mortgage loan originator" does not include any of the following:

- (a) An individual who performs purely administrative or clerical tasks on behalf of a mortgage loan originator;
- (b) A person licensed pursuant to Chapter 4735. of the Revised Code, or under the similar law of another state, who performs only real estate brokerage activities permitted by that license, provided the person is not compensated by a mortgage lender, mortgage broker, mortgage loan originator, or by any agent thereof;
- (c) A person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101, in effect on January 1, 2009;
- (d) A person acting solely as a loan processor or underwriter, who does not represent to the public, through advertising or other means of communicating, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities of a mortgage loan originator;
- (e) A loan originator licensed under sections 1322.01 to 1322.12 of the Revised Code, when acting solely under that authority;
- (f) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or another mortgage loan originator, or by any agent thereof;
- (g) Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with financing those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:
 - (i) Offer or negotiate the residential mortgage loan rates or terms;
 - (ii) Provide any counseling with borrowers about residential mortgage loan rates or terms;
 - (iii) Receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured home, mobile home, or industrialized unit;
 - (iv) Assist the borrower in completing the residential mortgage loan application.
- (3) An individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to existing mortgage transactions shall not be considered a mortgage loan originator for purposes of sections 1321.51 to 1321.60 of the Revised Code until July 1, 2011, unless such delay is denied by the United States department of housing and urban development.
- (Q) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by

a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling. For purposes of this division, "dwelling" has the same meaning as in the "Truth in Lending Act," 82 Stat. 146, 15 U.S.C. 1602.

(R) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators, or their successor entities, for the licensing and registration of mortgage loan originators, or any system established by the secretary of housing and urban development pursuant to the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," 122 Stat. 2810, 12 U.S.C. 5101.

(S) "Registered mortgage loan originator" means an individual to whom both of the following apply:

(1) The individual is a mortgage loan originator and an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration.

(2) The individual is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(T) "Administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry, and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(U) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.

(V) "Loan processor or underwriter" means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed mortgage loan originator or registered mortgage loan originator. For purposes of this division, to "perform clerical or support duties" means to do all of the following activities:

(1) Receiving, collecting, distributing, and analyzing information common for the processing or underwriting of a residential mortgage loan;

(2) Communicating with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent the communication does not include offering or negotiating loan rates or terms or counseling borrowers about residential mortgage loan rates or terms.

(W) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including all of the following:

- (1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
 - (2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
 - (3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing for any such transaction;
 - (4) Engaging in any activity for which a person engaged in that activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law;
 - (5) Offering to engage in any activity, or to act in any capacity, described in division (W) of this section.
- (X) "Licensee" means any person that has been issued a mortgage loan originator license under sections 1321.51 to 1321.60 of the Revised Code.
- (Y) "Unique identifier" means a number or other identifier that permanently identifies a mortgage loan originator and is assigned by protocols established by the nationwide mortgage licensing system and registry or federal banking agencies to facilitate electronic tracking of mortgage loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against mortgage loan originators.
- (Z) "State" in the context of referring to states in addition to Ohio means any state of the United States, the district of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the trust territory of the Pacific islands, the virgin islands, and the northern Mariana islands.
- (AA) "Depository institution" has the same meaning as in section 3 of the "Federal Deposit Insurance Act," 64 Stat. 873, 12 U.S.C. 1813, and includes any credit union.
- (BB) "Bona fide third party" means a person that is not an employee of, related to, or affiliated with, the registrant, and that is not used for the purpose of circumvention or evasion of sections 1321.51 to 1321.60 of the Revised Code.
- (CC) "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.
- (DD) "Employee" means an individual for whom a registrant or applicant, in addition to providing a wage or salary, pays social security and unemployment taxes, provides workers' compensation coverage, and withholds local, state, and federal income taxes. "Employee" also includes any individual who acts as a mortgage loan originator or operations manager of the registrant, but for whom the registrant is prevented by law from making income tax withholdings.
- (EE) "Primary point of contact" means the employee or owner designated by the registrant or applicant to be the

individual who the division of financial institutions can contact regarding compliance or licensing matters relating to the registrant's or applicant's business or lending activities secured by an interest in real estate.

(FF) "Consumer reporting agency" has the same meaning as in the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C. 1681a, as amended.

(GG) "Mortgage broker" has the same meaning as in section 1322.01 of the Revised Code.

CREDIT(S)

(2009 S 124, eff. 12-28-09; 2009 H 1, eff. 10-16-09; 2000 S 231, eff. 8-10-00; 1996 S 293, eff. 9-26-96 (General Effective Date); 1989 H 497, eff. 10-2-89; 1985 H 456; 1981 H 134; 1979 H 511; 1978 H 356; 132 v H 1; 131 v H 403)

Current through 2013 File 18 of the 130th GA (2013-2014).

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Effective: October 16, 2009

Baldwin's Ohio Revised Code Annotated Currentness

Title XIII. Commercial Transactions (Refs & Annos)

Chapter 1321. Small Loans (Refs & Annos)

Mortgage Loan Originators

→ → 1321.57 Interest and other charges; methods of calculation; installments; refunds on prepayment; default charges; deferment charges; insurance; prepayment penalties; closing costs; advances on behalf of borrower

(A) Notwithstanding any other provisions of the Revised Code, a registrant may contract for and receive interest, calculated according to the actuarial method, at a rate or rates not exceeding twenty-one per cent per year on the unpaid principal balances of the loan. Loans may be interest-bearing or precomputed.

(B) For purposes of computation of time on interest-bearing and precomputed loans, including, but not limited to, the calculation of interest, a month is considered one-twelfth of a year, and a day is considered one three hundred sixty-fifth of a year when calculation is made for a fraction of a month. A year is as defined in section 1.44 of the Revised Code. A month is that period described in section 1.45 of the Revised Code. Alternatively, a registrant may consider a day as one three hundred sixtieth of a year and each month as having thirty days.

(C) With respect to interest-bearing loans:

(1)(a) Interest shall be computed on unpaid principal balances outstanding from time to time, for the time outstanding.

(b) As an alternative to the method of computing interest set forth in division (C)(1)(a) of this section, a registrant may charge and collect interest for the first installment period based on elapsed time from the date of the loan to the first scheduled payment due date, and for each succeeding installment period from the scheduled payment due date to the next scheduled payment due date, regardless of the date or dates the payments are actually made.

(c) Whether a registrant computes interest pursuant to division (C)(1)(a) or (b) of this section, each payment shall be applied first to unpaid charges, then to interest, and the remainder to the unpaid principal balance. However, if the amount of the payment is insufficient to pay the accumulated interest, the unpaid interest continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(2) Interest shall not be compounded, collected, or paid in advance. However, both of the following apply:

(a) Interest may be charged to extend the first monthly installment period by not more than fifteen days, and the interest charged for the extension may be added to the principal amount of the loan.

(b) If part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the new loan contract may include any unpaid interest that has accrued. The resulting loan contract shall be deemed a new and separate loan transaction for purposes of this section. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in division (D)(3) of this section.

(D) With respect to precomputed loans:

(1) Loans shall be repayable in monthly installments of principal and interest combined, except that the first installment period may exceed one month by not more than fifteen days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days; and provided further that monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.

(2) Payments may be applied to the combined total of principal and precomputed interest until maturity of the loan. A registrant may charge interest after the original or deferred maturity of a precomputed loan at the rate specified in division (A) of this section on all unpaid principal balances for the time outstanding.

(3) When any loan contract is paid in full by cash, renewal, refinancing, or a new loan, one month or more before the final installment due date, the registrant shall refund, or credit the borrower with, the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, that follow the day of prepayment. If the prepayment is made other than on a scheduled installment due date, the nearest scheduled installment due date shall be used in such computation. If the prepayment occurs prior to the first installment due date, the registrant may retain one-thirtieth of the applicable charge for a first installment period of one month for each day from date of loan to date of prepayment, and shall refund, or credit the borrower with, the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the registrant shall credit the borrower with the same refund as if prepayment in full had been made on the date the judgment is entered.

(4) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a registrant may grant a deferment and may collect a deferment charge as provided in this section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred installment. A proportionate charge may be made for deferment for periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. If a loan is prepaid in full during a deferment period, the registrant shall make, or credit to the borrower, a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(E) A registrant, at the request of the borrower, may obtain, on one or more borrowers, credit life insurance, credit

accident and health insurance, and unemployment insurance. The premium or identifiable charge for the insurance may be included in the principal amount of the loan and may not exceed the premium rate filed by the insurer with the superintendent of insurance and not disapproved by the superintendent. If a registrant obtains the insurance at the request of the borrower, the borrower shall have the right to cancel the insurance for a period of twenty-five days after the loan is made. If the borrower chooses to cancel the insurance, the borrower shall give the registrant written notice of this choice and shall return all of the policies or certificates of insurance or notices of proposed insurance to the registrant during such period, and the full premium or identifiable charge for the insurance shall be refunded to the borrower by the registrant. If the borrower requests, in the notice to cancel the insurance, that this refund be applied to reduce the balance of a precomputed loan, the registrant shall credit the amount of the refund plus the amount of interest applicable to the refund to the loan balance.

If the registrant obtains the insurance at the request of the borrower, the registrant shall not charge or collect interest on any insured amount that remains unpaid after the insured borrower's date of death.

(F) A registrant may require the borrower to provide insurance or a loss payable endorsement covering reasonable risks of loss, damage, and destruction of property used as security for the loan and with the consent of the borrower such insurance may cover property other than that which is security for the loan. The amount and term of required property insurance shall be reasonable in relation to the amount and term of the loan contract and the type and value of the security, and the insurance shall be procured in accordance with the insurance laws of this state. The purchase of this insurance through the registrant or an agent or broker designated by the registrant shall not be a condition precedent to the granting of the loan. If the borrower purchases the insurance from or through the registrant or from another source, the premium may be included in the principal amount of the loan.

(G) On loans secured by an interest in real estate, all of the following apply:

(1) A registrant, if not prohibited by section 1343.011 of the Revised Code, may charge and receive up to two points, and a prepayment penalty not in excess of one per cent of the original principal amount of the loan. Points may be paid by the borrower at the time of the loan or may be included in the principal amount of the loan. On a refinancing, a registrant may not charge under division (G)(1) of this section either of the following:

(a) Points on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan, if the refinancing occurs within one year after the date of the refinanced loan on which points were charged;

(b) A prepayment penalty.

(2) As an alternative to the prepayment penalty described in division (G)(1) of this section, a registrant may contract for, charge, and receive the prepayment penalty described in division (G)(2) of this section for the prepayment of a loan prior to two years after the date the loan contract is executed. This prepayment penalty shall not exceed two per cent of the original principal amount of the loan if the loan is paid in full prior to one year after the date the loan contract is executed. The penalty shall not exceed one per cent of the original principal amount of the loan if the loan is paid in full at any time from one year, but prior to two years, after the date the loan contract is executed. A registrant shall not charge or receive a prepayment penalty under division (G)(2) of this section if any of the follow-

ing applies:

- (a) The loan is a refinancing by the same registrant or a registrant to whom the loan has been assigned;
- (b) The loan is paid in full as a result of the sale of the real estate that secures the loan;
- (c) The loan is paid in full with the proceeds of an insurance claim against an insurance policy that insures the life of the borrower or an insurance policy that covers loss, damage, or destruction of the real estate that secures the loan.

(3) Division (G) of this section is not a limitation on discount points or other charges for purposes of section 501(b)(4) of the "Depository Institutions Deregulation and Monetary Control Act of 1980," 94 Stat. 161, 12 U.S.C.A. 1735f-7 note.

(H)(1) In addition to the interest and charges provided for by this section, no further or other amount, whether in the form of broker fees, placement fees, or any other fees whatsoever, shall be charged or received by the registrant, except costs and disbursements in connection with any suit to collect a loan or any lawful activity to realize on a security interest or mortgage after default, including reasonable attorney fees incurred by the registrant as a result of the suit or activity and to which the registrant becomes entitled by law, and except the following additional charges which may be included in the principal amount of the loan or collected at any time after the loan is made:

- (a) The amounts of fees authorized by law to record, file, or release security interests and mortgages on a loan;
- (b) With respect to a loan secured by an interest in real estate, the following closing costs, if they are bona fide, reasonable in amount, paid to third parties, and not for the purpose of circumvention or evasion of this section:
 - (i) Fees or premiums for title examination, abstract of title, title insurance, surveys, title endorsements, title binders, title commitments, home inspections, or pest inspections; settlement or closing costs paid to unaffiliated third parties; courier fees; and any federally mandated flood plain certification fee;
 - (ii) If not paid to the registrant, an employee of the registrant, or a person affiliated with the registrant, fees for preparation of a mortgage, settlement statement, or other documents, fees for notarizing mortgages and other documents, appraisal fees, and fees for any federally mandated inspection of home improvement work financed by a second mortgage loan;
- (c) Fees for credit investigations not exceeding ten dollars.

(2) Division (H)(1) of this section does not limit the rights of registrants to engage in other transactions with borrowers, provided the transactions are not a condition of the loan.

(I) If the loan contract or security instrument contains covenants by the borrower to perform certain duties pertaining to insuring or preserving security and the registrant pursuant to the loan contract or security instrument pays for per-

formance of the duties on behalf of the borrower, the registrant may add the amounts paid to the unpaid principal balance of the loan or collect them separately. A charge for interest may be made for sums advanced not exceeding the rate of interest permitted by division (A) of this section. Within a reasonable time after advancing a sum, the registrant shall notify the borrower in writing of the amount advanced, any interest charged with respect to the amount advanced, any revised payment schedule, and shall include a brief description of the reason for the advance.

(J)(1) In addition to points authorized under division (G) of this section, a registrant may charge and receive the following:

(a) With respect to loans secured by goods or real estate: if the principal amount of the loan is five hundred dollars or less, loan origination charges not exceeding fifteen dollars; if the principal amount of the loan is more than five hundred dollars but less than one thousand dollars, loan origination charges not exceeding thirty dollars; if the principal amount of the loan is at least one thousand dollars but less than two thousand dollars, loan origination charges not exceeding one hundred dollars; if the principal amount of the loan is at least two thousand dollars but less than five thousand dollars, loan origination charges not exceeding two hundred dollars; and if the principal amount of the loan is at least five thousand dollars, loan origination charges not exceeding the greater of two hundred fifty dollars or one per cent of the principal amount of the loan.

(b) With respect to loans that are not secured by goods or real estate: if the principal amount of the loan is five hundred dollars or less, loan origination charges not exceeding fifteen dollars; if the principal amount of the loan is more than five hundred dollars but less than one thousand dollars, loan origination charges not exceeding thirty dollars; if the principal amount of the loan is at least one thousand dollars but less than five thousand dollars, loan origination charges not exceeding one hundred dollars; and if the principal amount of the loan is at least five thousand dollars, loan origination charges not exceeding the greater of two hundred fifty dollars or one per cent of the principal amount of the loan.

(2) If a refinancing occurs within ninety days after the date of the refinanced loan, a registrant may not impose loan origination charges on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan.

(3) Loan origination charges may be paid by the borrower at the time of the loan or may be included in the principal amount of the loan.

(K) A registrant may charge and receive check collection charges not greater than twenty dollars plus any amount passed on from other depository institutions for each check, negotiable order of withdrawal, share draft, or other negotiable instrument returned or dishonored for any reason.

(L) If the loan contract so provides, a registrant may collect a default charge on any installment not paid in full within ten days after its due date. For this purpose, all installments are considered paid in the order in which they become due. Any amounts applied to an outstanding loan balance as a result of voluntary release of a security interest, sale of security on the loan, or cancellation of insurance shall be considered payments on the loan, unless the parties otherwise agree in writing at the time the amounts are applied. The amount of the default charge shall not

exceed the greater of five per cent of the scheduled installment or fifteen dollars.

CREDIT(S)

(2009 H 1, eff. 10-16-09; 2006 S 185, eff. 1-1-07; 2000 S 231, eff. 8-10-00; 1999 H 283, eff. 9-29-99; 1996 S 189, eff. 6-13-96; 1995 H 282, eff. 3-4-96; 1989 H 497, eff. 10-2-89; 1985 H 456; 1981 H 134; 1979 H 511; 1978 H 1010; 131 v H 403)

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Bill Drafts

- 1 2005 OH S.B., 2005 Ohio Senate Bill No. 185, Ohio One Hundred Twenty-Sixth General Assembly - 2005-2006 Session (FULL TEXT - NETSCAN), (Jun 19, 2006), VERSION: Adopted, ACTION: Amended. Updating Legislation: **2006 Ohio Laws File 115 (Am. Sub. S.B. 185)**
- 2 2005 OH S.B., 2005 Ohio Senate Bill No. 185, Ohio One Hundred Twenty-Sixth General Assembly - 2005-2006 Session (FULL TEXT - NETSCAN), (May 24, 2006), VERSION: Enrolled, ACTION: Amended. Updating Legislation: **2006 Ohio Laws File 115 (Am. Sub. S.B. 185)**
- 3 2005 OH S.B., 2005 Ohio Senate Bill No. 185, Ohio One Hundred Twenty-Sixth General Assembly - 2005-2006 Session (FULL TEXT - NETSCAN), (May 24, 2006), VERSION: Amended/Subbed, ACTION: Amended. Updating Legislation: **2006 Ohio Laws File 115 (Am. Sub. S.B. 185)**
- 4 2005 OH S.B., 2005 Ohio Senate Bill No. 185, Ohio One Hundred Twenty-Sixth General Assembly - 2005-2006 Session (FULL TEXT - NETSCAN), (Mar 29, 2006), ACTION: Amended. Updating Legislation: **2006 Ohio Laws File 115 (Am. Sub. S.B. 185)**
- 5 2005 OH S.B., 2005 Ohio Senate Bill No. 185, Ohio One Hundred Twenty-Sixth General Assembly - 2005-2006 Session (FULL TEXT - NETSCAN), (Mar 29, 2006), VERSION: Amended/Subbed, ACTION: Amended. Updating Legislation: **2006 Ohio Laws File 115 (Am. Sub. S.B. 185)**

Reports and Related Materials

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Effective: September 1, 2008

Baldwin's Ohio Revised Code Annotated Currentness
Title XIII. Commercial Transactions (Refs & Annos)
 Chapter 1321. Small Loans (Refs & Annos)
 Short-Term Loans
 →→ 1321.35 Definitions

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 loan made pursuant to sections 1321.35 to 1321.48 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. All fees and charges 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.

CREDIT(S)

(2008 H 545, eff. 9-1-08)

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Effective: September 1, 2008

Baldwin's Ohio Revised Code Annotated Currentness

Title XIII. Commercial Transactions (Refs & Annos)

Chapter 1321. Small Loans (Refs & Annos)

Short-Term Loans

→→ 1321.36 Licenses

(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, mail, or internet.

CREDIT(S)

(2008 H 545, eff. 9-1-08)

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Effective: September 1, 2008

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Title XIII. Commercial Transactions (Refs & Annos)

Chapter 1321. Small Loans (Refs & Annos)

Short-Term Loans

→ → 1321.39 Loan criteria; contracts

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 dollars.
- (B) The duration of the loan, as specified in the loan contract required under division (C) of this section, is not less than thirty-one days.
- (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 on substantially similar loans."
 - (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.

(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.

CREDIT(S)

(2008 H 545, eff. 9-1-08)

Current through 2013 File 18 of the 130th GA (2013-2014).

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AN ACT

To amend sections 1321.51, 1321.52, 1321.53, 1321.57, 1321.58, 1321.59, and 1321.60 of the Revised Code to require a certificate of registration for persons holding themselves out as willing to make second mortgage loans, to increase the net assets requirements of registrants to twenty thousand dollars, to change the requirements for a bond, to delete the maximum term and to authorize a rate of 18 per cent per annum on loans made by registrants, to require actuarial rebates on prepayment of loans over 61 months in term, to authorize deferments, to delete authorization to require credit life insurance, to authorize sale of joint credit life insurance and single accident and health insurance, to require a right to cancel for twenty-five days on all credit insurance, to delete service charges, to authorize real estate loan closing costs, to delete disclosure requirements on loan terms and interest rates inconsistent with the federal Truth-in-Lending Act, to permit open-end loans at 18 per cent per annum, to delete a prohibition inconsistent with the Equal Credit Opportunity Act, and to delete advertising disclosures covered by the Truth-in-Lending Act.

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

SECTION 1. That sections 1321.51, 1321.52, 1321.53, 1321.57, 1321.58, 1321.59, and 1321.60 of the Revised Code be amended to read as follows:

Sec. 1321.51. As used in sections 1321.51 to 1321.60 of the Revised Code:

(A) "Person" means an individual, copartnership, association, trust, corporation, or any other legal entity.

(B) "Certificate" means a certificate of registration issued under sections 1321.51 to 1321.60 of the Revised Code.

(C) "Registrant" means a person to whom one or more certificates have been issued.

(D) "Division" means the division of consumer finance in the department of commerce.

(E) "PRINCIPAL AMOUNT" MEANS THE AMOUNT OF CASH PAID TO OR PAID OR PAYABLE FOR THE ACCOUNT OF THE BORROWER.

(F) "INTEREST" MEANS ALL CHARGES PAYABLE DIRECTLY OR INDIRECTLY BY A BORROWER WHICH ARE IMPOSED DIRECTLY OR INDIRECTLY BY THE REGISTRANT AS AN INCIDENT TO THE LOAN, HOWEVER DENOMINATED, INCLUDING INTEREST, DISCOUNT LOAN FEE, CREDIT OR INVESTIGATION FEE, BUT SHALL NOT INCLUDE PERMISSIBLE DEFAULT OR DEFERMENT CHARGES, LAWFUL FEES, INSURANCE CHARGES OR PREMIUMS, COURT COSTS, OR OTHER CHARGES SPECIFICALLY AUTHORIZED BY LAW.

(G) "INTEREST-BEARING LOAN" MEANS A LOAN IN WHICH THE DEBT IS EXPRESSED AS THE PRINCIPAL AMOUNT AND INTEREST IS COMPUTED, CHARGED, AND COLLECTED ON UNPAID PRINCIPAL BALANCES OUTSTANDING FROM TIME TO TIME, FOR THE ACTUAL TIME OUTSTANDING.

(H) "PRECOMPUTED LOAN" MEANS A LOAN IN WHICH THE DEBT IS A SUM COMPRISING THE PRINCIPAL AMOUNT AND THE AMOUNT OF INTEREST COMPUTED IN ADVANCE ON THE ASSUMPTION THAT ALL SCHEDULED PAYMENTS WILL BE MADE WHEN DUE.

(I) "ACTUARIAL METHOD" MEANS THE METHOD OF ALLOCATING PAYMENTS MADE ON A LOAN BETWEEN THE PRINCIPAL AMOUNT AND INTEREST WHEREBY A PAYMENT IS APPLIED FIRST TO THE ACCUMULATED INTEREST AND THEN TO THE UNPAID PRINCIPAL AMOUNT.

(J) "APPLICABLE CHARGE" MEANS THE AMOUNT OF INTEREST ATTRIBUTABLE TO EACH MONTHLY INSTALLMENT PERIOD OF THE LOAN CONTRACT. THE APPLICABLE CHARGE IS COMPUTED AS IF EACH INSTALLMENT PERIOD WERE ONE MONTH AND ANY CHARGE FOR EXTENDING THE FIRST INSTALLMENT PERIOD BEYOND ONE MONTH IS IGNORED. IN THE CASE OF LOANS ORIGINALLY SCHEDULED TO BE REPAYED IN SIXTY-ONE MONTHS OR LESS, THE APPLICABLE CHARGE FOR ANY INSTALLMENT PERIOD IS THAT

MONTHLY INSTALLMENT PAYMENT DATES MAY BE OMITTED TO ACCOMMODATE BORROWERS WITH SEASONAL INCOME.

(2) PAYMENTS MAY BE APPLIED TO THE COMBINED TOTAL OF PRINCIPAL AND PRECOMPUTED INTEREST UNTIL THE LOAN IS FULLY PAID.

(3) WHEN ANY LOAN CONTRACT IS PAID IN FULL BY CASH, RENEWAL OR REFINANCING, OR A NEW LOAN, ONE MONTH OR MORE BEFORE THE FINAL INSTALLMENT DUE DATE, THE REGISTRANT SHALL REFUND OR CREDIT THE BORROWER WITH THE TOTAL OF THE APPLICABLE CHARGES FOR ALL FULLY UNEXPIRED INSTALLMENT PERIODS AS ORIGINALLY SCHEDULED OR AS DEFERRED, WHICH FOLLOW THE DAY OF PREPAYMENT. IF SUCH PREPAYMENT IS MADE OTHER THAN ON A SCHEDULED PAYMENT DATE, THE NEAREST SCHEDULED INSTALLMENT PAYMENT DATE SHALL BE USED IN SUCH COMPUTATION. PROVIDED FURTHER, IF SUCH PREPAYMENT OCCURS PRIOR TO THE FIRST INSTALLMENT DUE DATE, THE REGISTRANT MAY RETAIN ONE-THIRTIETH OF THE APPLICABLE CHARGE FOR A FIRST INSTALLMENT PERIOD OF ONE MONTH FOR EACH DAY FROM DATE OF LOAN TO DATE OF PREPAYMENT AND SHALL REFUND OR CREDIT THE BORROWER WITH THE BALANCE OF THE TOTAL INTEREST CONTRACTED FOR, IF THE MATURITY OF THE LOAN IS ACCELERATED FOR ANY REASON AND JUDGMENT IS ENTERED, THE REGISTRANT SHALL CREDIT THE BORROWER WITH THE SAME REFUND AS IF PREPAYMENT IN FULL HAD BEEN MADE ON THE DATE THE JUDGMENT IS ENTERED.

(4) If the loan contract so provides, the registrant may collect an additional A DEFAULT charge for each full month that any installment is outstanding after the due date of such installment originally scheduled by the contract. FOR THIS PURPOSE, ALL PAYMENTS MADE ARE CONSIDERED MADE IN THE ORDER IN WHICH THEY BECOME DUE. THE DEFAULT CHARGE SHALL NOT EXCEED AN AMOUNT equal to that proportion of the original charge for the loan which the amount of the monthly installment bears to the sum of all monthly balances originally scheduled by the APPLICABLE CHARGE FOR THE LAST INSTALLMENT PERIOD OF the contract. A minimum charge equal to the additional DEFAULT charge for one full month may be collected for an installment which is past due more than fifteen days. A DEFAULT CHARGE MAY BE COLLECTED AT THE TIME IT ACCRUES OR ANY TIME THEREAFTER.

(5) IF THE PARTIES AGREE IN WRITING, EITHER IN THE LOAN CONTRACT OR IN A SUBSEQUENT AGREEMENT, TO A DEFERMENT OF WHOLLY UNPAID INSTALL-

MENTS, A REGISTRANT MAY GRANT A DEFERMENT AND MAY COLLECT A DEFERMENT CHARGE AS PROVIDED IN THIS SECTION. A DEFERMENT POSTPONES THE SCHEDULED DUE DATE OF THE EARLIEST UNPAID INSTALLMENT AND ALL SUBSEQUENT INSTALLMENTS AS ORIGINALLY SCHEDULED, OR AS PREVIOUSLY DEFERRED, FOR A PERIOD EQUAL TO THE DEFERMENT PERIOD. THE DEFERMENT PERIOD IS THAT PERIOD DURING WHICH NO INSTALLMENT IS SCHEDULED TO BE PAID BY REASON OF THE DEFERMENT. THE DEFERMENT CHARGE FOR A ONE-MONTH PERIOD MAY NOT EXCEED THE APPLICABLE CHARGE FOR THE INSTALLMENT PERIOD IMMEDIATELY FOLLOWING THE DUE DATE OF THE LAST UNDEFERRED PAYMENT. A PROPORTIONATE CHARGE MAY BE MADE FOR DEFERMENT FOR PERIODS OF MORE OR LESS THAN ONE MONTH. A DEFERMENT CHARGE IS EARNED PRORATA DURING THE DEFERMENT PERIOD AND IS FULLY EARNED ON THE LAST DAY OF THE DEFERMENT PERIOD. SHOULD A LOAN BE PREPAID IN FULL DURING A DEFERMENT PERIOD, THE REGISTRANT SHALL MAKE OR CREDIT TO THE BORROWER A REFUND OF THE UNEARNED DEFERMENT CHARGE IN ADDITION TO ANY OTHER REFUND OR CREDIT MADE FOR PREPAYMENT OF THE LOAN IN FULL.

(6) (E) A registrant, AT THE REQUEST OF THE BORROWER, may require OBTAIN credit life insurance providing for death benefits only on the life of one borrower, and may deduct and retain from the principal amount of the loan an amount equal to the premium lawfully charged by the insurer; subject, however, to the same rebate requirement of division (A) of this section which applies to the original charge for the loan. When there are two or more obligors on the loan contract, only one charge for credit life insurance may be made and only one of the obligors may be required to be insured. Insurance obtained from, by, or through a registrant shall be in effect when the loan is made. Credit life insurance shall be payable without exception on proof that the insured obligor died during the term of the loan contract, and the death benefit shall be equal to the balance of the loan contract outstanding on the day of death after retaking any unearned charge for the loan. ON ONE OR MORE BORROWERS AND CREDIT ACCIDENT AND HEALTH INSURANCE ON ONE BORROWER. THE PREMIUM OR IDENTIFIABLE CHARGE FOR THE INSURANCE MAY BE INCLUDED IN THE PRINCIPAL AMOUNT OF THE LOAN AND MAY NOT EXCEED THE PREMIUM RATE FILED BY THE INSURER WITH THE SUPERINTENDENT OF INSURANCE AND NOT DISAPPROVED BY HIM. IF A REGISTRANT OBTAINS CREDIT LIFE INSURANCE OR CREDIT ACCIDENT AND HEALTH INSURANCE AT THE

SECTION 3. All loans made by registrants before this act takes effect and the rights, duties, and interests flowing from them shall be terminated, completed, consummated or enforced as required or permitted by statute, rule of law, or regulation in effect on the date such loans were entered into.

Verney H. Pitts
Speaker of the House of Representatives.
David Rank

President _____ of the Senate.

Passed June 25, 1979

Approved June 29, 1979
James Earl Lee
Governor.

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

David A. Johnston
Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 29th day of June, A. D. 1979

Anthony J. Callahan
Secretary of State.

File No. 56

Effective Date September 28, 1979

THIS DOCUMENT IS A XEROGRAPHIC COPY OF A PUBLIC RECORD IN THE CUSTODY OF THE OHIO HISTORICAL SOCIETY UNDER PROVISIONS OF SECTION 149.31 OF THE OHIO REVISED CODE."

(127th General Assembly)
(Substitute House Bill Number 545)

AN ACT

To amend sections 109.572, 135.63, 1181.05, 1181.21, 1181.25, 1315.99, 1321.02, 1321.15, 1321.21, 1321.99, 1345.01, 1349.71, 1349.72, 1733.25, and 2307.61, to enact sections 121.085, 135.68, 135.69, 135.70, 1321.35, 1321.36, 1321.37, 1321.38, 1321.39, 1321.40, 1321.41, 1321.42, 1321.421, 1321.422, 1321.43, 1321.44, 1321.45, 1321.46, 1321.461, 1321.47, and 1321.48, and to repeal sections 1315.35, 1315.36, 1315.37, 1315.38, 1315.39, 1315.40, 1315.41, 1315.42, 1315.43, and 1315.44 of the Revised Code to repeal the Check-Cashing Lender Law, to establish the Short-Term Lender Law, to create a short-term installment loan linked deposit program, to further restrict the making of multiple loans under the Small Loan Law, to expand the responsibilities of the Consumer Finance Education Board, and to make other related changes.

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

SECTION 1. That sections 109.572, 135.63, 1181.05, 1181.21, 1181.25, 1315.99, 1321.02, 1321.15, 1321.21, 1321.99, 1345.01, 1349.71, 1349.72, 1733.25, and 2307.61 be amended, and sections 121.085, 135.68, 135.69, 135.70, 1321.35, 1321.36, 1321.37, 1321.38, 1321.39, 1321.40, 1321.41, 1321.42, 1321.421, 1321.422, 1321.43, 1321.44, 1321.45, 1321.46, 1321.461, 1321.47, and 1321.48 of the Revised Code be enacted to read as follows:

Sec. 109.572. (A)(1) Upon receipt of a request pursuant to section 121.08, 3301.32, 3301.541, 3319.39, 5104.012, or 5104.013 of the Revised Code, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau

or for a theft offense, the trier of fact may determine that an owner's property was willfully damaged or that a theft offense involving the owner's property has been committed, whether or not any person has pleaded guilty to or has been convicted of any criminal offense or has been adjudicated a delinquent child in relation to any act involving the owner's property.

(2) This section does not affect the prosecution of any criminal action or proceeding or any action to obtain a delinquent child adjudication in connection with willful property damage or a theft offense.

(H) As used in this section:

(1) "Administrative costs" includes the costs of written demands for payment and associated postage under division (A)(2) of this section.

(2) "Value of the property" means one of the following:

(a) The retail value of any property that is offered for sale by a mercantile establishment, irrespective of whether the property is destroyed or otherwise damaged, is modified or otherwise altered, or otherwise is not resalable at its full market price;

(b) The face value of any check or other negotiable instrument that is not honored due to insufficient funds in the drawer's account, the absence of any drawer's account, or another reason, and all charges imposed by a bank, savings and loan association, credit union, or other financial institution upon the holder of the check or other negotiable instrument;

(c) The replacement value of any property not described in division (H)(1) or (2) of this section.

SECTION 2. That existing sections 109.572, 135.63, 1181.05, 1181.21, 1181.25, 1315.99, 1321.02, 1321.15, 1321.21, 1321.99, 1345.01, 1349.71, 1349.72, 1733.25, and 2307.61 of the Revised Code are hereby repealed.

SECTION 3. That sections 1315.35, 1315.36, 1315.37, 1315.38, 1315.39, 1315.40, 1315.41, 1315.42, 1315.43, and 1315.44 of the Revised Code are hereby repealed.

SECTION 4. (A) All licenses issued pursuant to sections 1315.35 to 1315.44 of the Revised Code, and in effect on the date this section becomes effective, shall remain in effect, unless suspended or revoked by the superintendent of financial institutions, until such time as the license would be subject to renewal pursuant to sections 1315.35 to 1315.44 of the Revised Code as those sections existed prior to the effective date of this act. The

superintendent shall recognize any such license holder as a valid license holder under sections 1321.35 to 1321.48 of the Revised Code as enacted by this act, and such license holder thereafter is subject to all provisions of sections 1321.35 to 1321.48 of the Revised Code.

(B) If any person licensed under sections 1315.35 to 1315.44 of the Revised Code on the effective date of this section applies for a license to operate under sections 1321.01 to 1321.19 of the Revised Code for the 2008 licensing period ending June 30, 2009, that person shall pay only one-half of the license fee provided for under section 1321.03 of the Revised Code.

SECTION 5. Within thirty days of the effective date of this act, the Director of Budget and Management shall make a one-time transfer of five per cent of the balance of the consumer finance fund, created under section 1321.21 of the Revised Code, to the financial literacy education fund created under section 121.085 of the Revised Code as enacted by this act.

Jon A. Husted

Speaker _____ of the House of Representatives.

Bill Harris

President _____ of the Senate.

Passed May 20, 2008

Approved June 2, 2008

Jed Strickland

Governor.

Sub. H. B. No. 545

127th G.A.

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

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
2nd day of June, A. D. 2008

Janet B...

Secretary of State.

File No. 91 Effective Date 9/1/08

As Introduced

128th General Assembly

Regular Session

2009-2010

H. B. No. 209

Representative Lundy

Cosponsors: Representatives Foley, Murray, Hagan, Phillips, Skindell,
Stewart, Harris, Fende, Newcomb, Okey, Celeste, Harwood

A BILL

To amend sections 1315.26, 1321.02, 1321.12, 1321.13, 1
1321.131, 1321.14, 1321.15, 1321.44, 1321.52, 2
1321.53, 1321.551, 1321.56, 1321.57, 1321.571, 3
1321.59, 1321.99, 1322.01, 1343.01, 1345.01, 4
4710.02, 4712.01, and 4712.07 and to enact 5
sections 1321.011, 1321.542, 1321.591, 1321.61, 6
and 1351.031 of the Revised Code to establish 7
various consumer protections regarding small and 8
short-term loans. 9

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

Section 1. That sections 1315.26, 1321.02, 1321.12, 1321.13, 10
1321.131, 1321.14, 1321.15, 1321.44, 1321.52, 1321.53, 1321.551, 11
1321.56, 1321.57, 1321.571, 1321.59, 1321.99, 1322.01, 1343.01, 12
1345.01, 4710.02, 4712.01, and 4712.07 be amended and sections 13
1321.011, 1321.542, 1321.591, 1321.61, and 1351.031 of the Revised Code 14
Code be enacted to read as follows: 15

Sec. 1315.26. (A) No check-cashing business shall charge 16
check-cashing fees or other check-cashing charges in an amount 17
that exceeds three per cent of the face amount of the check for 18

evasion of sections 1321.51 to 1321.60 of the Revised Code or of 643
the rules adopted under those sections, and orders the registrant 644
in writing to desist from the conduct. For purposes of this 645
section, "other business" includes any business conducted by a 646
person who is registered or is required to be registered as a 647
credit services organization under section 4712.02 of the Revised 648
Code, licensed as a check-cashing business under section 1315.22 649
of the Revised Code, engaged in the practice of debt adjusting 650
pursuant to Chapter 4710. of the Revised Code, or is a lessor as 651
defined in section 1351.01 of the Revised Code. 652

Sec. 1321.56. Any person who willfully violates section 653
1321.57 or division (E) of section 1321.59 of the Revised Code 654
shall forfeit to the borrower the amount of interest paid by the 655
borrower. The maximum rate of interest applicable to any loan 656
transaction that does not comply with section 1321.57 of the 657
Revised Code shall be the rate that would be applicable in the 658
absence of sections 1321.51 to 1321.60 of the Revised Code. 659

Sec. 1321.57. (A) Notwithstanding any other provisions of the 660
Revised Code other than division (E) of section 1321.59 of the 661
Revised Code, a registrant may contract for and receive interest, 662
calculated according to the actuarial method, at a rate or rates 663
not exceeding twenty-one per cent per year on the unpaid principal 664
balances of the loan. Loans may be interest-bearing or 665
precomputed. 666

(B) For purposes of computation of time on interest-bearing 667
and precomputed loans, including, but not limited to, the 668
calculation of interest, a month is considered one-twelfth of a 669
year, and a day is considered one three hundred sixty-fifth of a 670
year when calculation is made for a fraction of a month. A year is 671
as defined in section 1.44 of the Revised Code. A month is that 672
period described in section 1.45 of the Revised Code. 673

is greater than what is permitted in division (E) of section 955
1321.59 of the Revised Code for loans described in that division. 956

Sec. 1321.59. (A) No registrant under sections 1321.51 to 957
1321.60 of the Revised Code shall permit any borrower to be 958
indebted for a loan made under sections 1321.51 to 1321.60 of the 959
Revised Code at any time while the borrower is also indebted to an 960
affiliate or agent of the registrant for a loan made under 961
sections 1321.01 to 1321.19 of the Revised Code for the purpose or 962
with the result of obtaining greater charges than otherwise would 963
be permitted by sections 1321.51 to 1321.60 of the Revised Code. 964

(B) No registrant shall induce or permit any person to become 965
obligated to the registrant under sections 1321.51 to 1321.60 of 966
the Revised Code, directly or contingently, or both, under more 967
than one contract of loan at the same time for the purpose or with 968
the result of obtaining greater charges than would otherwise be 969
permitted by sections 1321.51 to 1321.60 of the Revised Code. 970

(C) No registrant shall refuse to provide information 971
regarding the amount required to pay in full a loan under sections 972
1321.51 to 1321.60 of the Revised Code when requested by the 973
borrower or by another person designated in writing by the 974
borrower. 975

(D) On any loan or application for a loan under sections 976
1321.51 to 1321.60 of the Revised Code secured by a mortgage on a 977
borrower's real estate which is other than a first lien on the 978
real estate, no person shall pay or receive, directly or 979
indirectly, fees or any other type of compensation for services of 980
a broker that, in the aggregate, exceed the lesser of one thousand 981
dollars or one per cent of the principal amount of the loan. 982

(E)(1) No registrant shall make a loan of one thousand 983
dollars or less under sections 1321.51 to 1321.60 of the Revised 984
Code that will obligate the borrower to pay an annual percentage 985

rate for the loan that exceeds twenty-eight per cent, as 986
calculated in compliance with the "Truth in Lending Act," 82 Stat. 987
149 (1980), 15 U.S.C. 1606, unless one of the following applies: 988
989

(a) The term of loan is greater than three months. 990

(b) The loan contract requires the borrower to repay the loan 991
in three or more monthly installments of substantially equal 992
amounts. 993

(2) Any loan made by a registrant that meets the requirements 994
of division (E)(1)(a) or (b) of this section shall be subject to 995
section 1321.57 of the Revised Code. 996

Sec. 1321.591. No registrant or licensee shall use unfair, 997
deceptive, or unconscionable means to collect or attempt to 998
collect any claim. Without limiting the general application of the 999
foregoing, the following conduct is deemed to violate this 1000
section: 1001

(A) The collection of or the attempt to collect any interest 1002
or other charge, fee, or expense incidental to the principal 1003
obligation unless such interest or incidental fee, charge, or 1004
expense is expressly authorized by the agreement creating the 1005
obligation and by law. 1006

(B) Any communication with a consumer whenever it is known 1007
that the consumer is represented by an attorney and the attorney's 1008
name and address are known, or could be easily ascertained, unless 1009
the attorney fails to answer correspondence, return telephone 1010
calls or discuss the obligation in question, or unless the 1011
attorney consents to direct communication with the consumer. 1012

(C) Placing a telephone call or otherwise communicating by 1013
telephone with a consumer or third party, at any place, including 1014
a place of employment, falsely stating that the call is urgent or 1015

Section 2. That existing sections 1315.26, 1321.02, 1321.12, 1595
1321.13, 1321.131, 1321.14, 1321.15, 1321.44, 1321.52, 1321.53, 1596
1321.551, 1321.56, 1321.57, 1321.571, 1321.59, 1321.99, 1322.01, 1597
1343.01, 1345.01, 4710.02, 4712.01, and 4712.07 of the Revised 1598
Code are hereby repealed. 1599

Section 3. Section 1321.14 of the Revised Code is presented 1600
in this act as a composite of the section as amended by both Am. 1601
Sub. S.B. 293 and Sub. H.B. 495 of the 121st General Assembly. The 1602
General Assembly, applying the principle stated in division (B) of 1603
section 1.52 of the Revised Code that amendments are to be 1604
harmonized if reasonably capable of simultaneous operation, finds 1605
that the composite is the resulting version of the section in 1606
effect prior to the effective date of the section as presented in 1607
this act. 1608

Status Report of Legislation

128th General Assembly - House Bills

HB 209

Primary Sponsor(s): Lundy

Subject: Small and short-term loans-consumer protections

Abbreviations used in the Status Report

A - Amended P - Postponed S - Substitute * - Note
 F - Failed to Pass R - Rereferred V - Vetoed

Action by Chamber	House	Senate
Introduced	06/04/09	

Committee Assigned	Financial Institutions, Real Estate, & Securities
Committee Report	

Passed 3rd Consideration
 Further Action
 To Conference Committee

Concurrence
 Sent to Governor
 End of 10-day period
 Governor's Action
 Effective Date

Notes