ORIGINAL

IN THE SUPREME COURT OF OHIO

Ohio Neighborhood Finance, Inc.,	:	S. C. Case No. 2013-0103
	:	
Plaintiff-Appellant,	:	ON APPEAL FROM COURT OF APPEALS, NINTH APPELLATE DISTRICT
v.	:	
Rodney Scott,	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. 11CA010030
	:	

BRIEF OF AMICUS CURIAE RICHARD F. KECK, FORMER DEPUTY SUPERINTENDENT AND CHIEF EXAMINER OF THE DIVISION OF FINANCIAL INSTITUTIONS OF THE OHIO DEPARTMENT OF COMMERCE, IN SUPPORT OF APPELLANT OHIO NEIGHBORHOOD FINANCE, INC.

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STATEMENT OF INTEREST

Amicus Richard F. Keck served as Chief Examiner of the Division of Consumer Finance (subsequently reorganized into the Division of Financial Institutions) of the Ohio Department of Commerce for more than twenty years, from 1989 until 2009. Recognizing his standing within the Division of Financial Institutions, Department of Commerce, Governor Strickland appointed Mr. Keck as acting Deputy Superintendent for Consumer Finance in 2006 - 2007. As such, Mr. Keck has more than twenty years of direct, day-to-day administrative oversight experience in dealing with the issues that confront the Court.

Mr. Keck is now fully retired, but remains concerned that Ohio's finance laws be interpreted and enforced correctly and consistently. Inasmuch as Mr. Keck knows that the decision below is contrary to the long-standing interpretation of the Mortgage Loan Act, R.C. 1321.51-.60, by the Department of Commerce, and inasmuch as Mr. Keck believes that the decision below is fundamentally wrong on key points, he submits this amicus brief in the hope that this Court will correct the error below.

Mr. Keck wishes to emphasize that he is NOT now, and has never been, employed by, or otherwise compensated by, the finance industry. Rather, he offers this brief as a true, uncompensated friend of the Court, without favor for or bias against the finance industry.

Mr. Keck's qualifications relating to the issues before the Court are unique. As Chief Examiner, Mr. Keck was responsible for overseeing all lenders licensed in Ohio during his 20 year tenure. This included licensees under Ohio's Mortgage Loan Act, R.C. 1321.51-.60; Small Loan Act, R.C. 1321.01-.19; and Check-Cashing Loan Act, R.C. 1315.35-.48 (repealed when the Short Term Loan Act was adopted). He was a key participant in twenty years of policy and enforcement decisions of the Department under each of these statutes; he participated in twenty

years of rule-making and administrative enforcement decisions under these statutes; he oversaw the annual examination of lenders under these statutes for twenty years; and he reviewed and resolved the resulting issues and complaints arising under these statutes for twenty years. Indeed, when acting as Deputy Superintendent for Consumer Finance, he was the individual ultimately responsible for the decisions of the State of Ohio in all these areas.

When the Short Term Loan Act ("STLA"), R.C. 1321.35-.48, was enacted on June 2, 2008, repealing the Check-Cashing Loan Act, Mr. Keck was still Chief Examiner. He worked with others in the Department in reviewing and commenting on the proposed STLA legislation during the General Assembly's consideration of the new statute, and after its enactment, was intimately involved in the Department's decision-making as to the proper interpretation and enforcement of the STLA.

STATEMENT OF FACTS

Amicus Mr. Keck wishes to focus on errors of the court below relating to its assumption about the General Assembly's intent in adopting the STLA and its lack of knowledge about, and deference to, the regulatory interpretation and implementation of Ohio's lending statutes by the Department of Commerce. He therefore offers no Statement of Facts, but defers to that of Appellant.

ARGUMENT

Mr. Keck respectfully submits that the Court of Appeals' decision erred in two fundamental respects. First, the court's assumption that the Short Term Loan Act ("STLA") was intended to preclude single installment loans under the Mortgage Loan Act ("MLA") or the Small Loan Act ("SLA") reflects a basic misunderstanding of Ohio's lending licensing statutes and the legislative history of the STLA. It also disregards the Department of Commerce's

interpretation of the STLA's plain and unambiguous wording, as approved by the Attorney General. And second, the court below was simply wrong in holding, contrary to thirty years of administrative regulation, that single installment loans are precluded under the MLA.

> Proposition of Law No. II: The Short Term Loan Act, R.C. 1321.35 – R.C. 1321.48, does not prohibit registrants under the Ohio Mortgage Loan Act from making interest-bearing loans permitted by the express terms of R.C. 1321.57.

I. The General Assembly Never Intended That The STLA Preclude Single Installment Loans Under The MLA Or The SLA.

The lynchpin of the decision of the Court of Appeals to preclude single installment loans under the MLA was its assumption that allowing such loans would "nullify the very legislation [STLA] that is designed to regulate payday–type loans – *a result at odds with the intent of the General Assembly*." Decision at 5 (emphasis added). The court's speculation as to the "intent of the General Assembly" was simply wrong.

A. Prior To The Adoption Of The STLA, Ohio Law Provided Three Alternative Licensing Regimes For Lending.

Prior to the enactment of the STLA in 2008, Ohio had three separate statutory schemes under which a non-bank lender could be licensed to make loans:

(1) The Small Loan Act – R.C. 1321.01-.19 ("SLA")

(2) The Mortgage Loan Act – R.C. 1321.51-.60 ("MLA")

(3) The Check-Cashing Loan Act – R.C. 1315.35-.44 (repealed by H.B. 545 effective September 1, 2008) ("CCLA").

Each of the three statutory schemes had different provisions setting maximum fees that could be charged for items such as loan applications and credit checks. Each also had separate interest rate limitations. Given its advantageous combination of permitted fees and interest rates,

lenders seeking to make single installment consumer loans universally sought licensure under the CCLA. This made sense; the CCLA permitted fees and interest rates that were substantially higher (depending on the amount of the loan) than those available under the SLA or the MLA. But while the single installment lenders elected to be licensed under the CCLA because of the economics it permitted, they always had the alternative of doing business as licensees under the SLA or MLA.

Concerns about whether regulation of single installment consumer lenders should be strengthened led to introduction of H.B. 545 which, effective September 1, 2008, repealed the CCLA and substituted the STLA in its stead.

B. Adoption Of The STLA Repealed And Replaced Only The Check-Cashing Loan Statute. The General Assembly, Although Expressly Aware Of The Alternative Lending Authority Under The MLA And SLA, Declined To Adopt Language Prepared By The Department That Would Have Precluded Lending Under The MLA and SLA Having A Duration Of Less Than Three Months.

The Department was fully aware of, and carefully followed, the legislative hearings on H.B. 545 that subsequently enacted the STLA and repealed the CCLA. The Department fully understood that if the CCLA were repealed, licensees under that statute would probably seek lending authority under the MLA or the SLA rather than seek licensure under the STLA because those two statutes provided for greater permissive fees than the STLA. Mr. Keck therefore prepared a chart comparing the alternative lending authority available under the SLA, the MLA, the STLA and the CCLA to assure that the General Assembly understood the licensing options single installment lenders would have if the STLA were enacted. In discussions between the Department and members of the General Assembly, it was pointed out that if H.B. 545 were enacted, the MLA and SLA would still be available to the industry as alternative lending authority. Mr. Keck himself explained to the Department's legislative liaison that in dealing

with legislator questions about H.B. 545 to make clear that the legislators understood that the MLA and the SLA provided alternative short term lending authority to Ohio loan companies even if the STLA were enacted.

The General Assembly clearly got the message. The Department even provided the General Assembly with proposed language for inclusion in H.B. No. 545 that would effectively preclude MLA and SLA registrants from making single installment consumer loans. The Department's draft language proposed that loans under these two statutes have a minimum duration of three months. [See point 14 of the Memorandum and the relevant attached draft amendments in Appendix A-1. (App. A-1)] This draft language was presented to members of the Senate and their staff for consideration prior to adoption of H.B. 545. [See e-mails from the Department of Commerce's Legislative Director to members of the Senate and their staff. (App. A-1 and A-2)]

Based on his personal involvement, Mr. Keck is confident that it was common knowledge in the General Assembly at the time of adoption of H.B. 545 that single installment consumer lenders could elect licensing under the MLA or the SLA instead of being licensed under the STLA; that MLA and SLA licensees could make single installment consumer loans even if the STLA were enacted; and that consumer lenders would probably opt for licensing under the MLA or SLA rather than the STLA. Nonetheless, the proposed amendments drafted by the Department that would have precluded single installment consumer loans of less than three months' duration under the MLA and SLA were never adopted by the General Assembly.

The General Assembly in enacting H.B. 545 did acknowledge, however, the alternative lending authority that CCLA lenders could operate under in addition to the newly enacted STLA. In Section 4 of H.B. 545, the General Assembly actually discounted registration fees for CCLA

lenders who sought relicensing under the SLA (NOT the STLA) if they chose to operate under that statute rather than the newly enacted STLA. Section 4(B) of H.B. 545 states:

> If any person licensed under sections 1315.35 to 1315.44 of the Revised Code [CCLA] on the effective date of this section applies for a license to operate under sections 1321.01 to 1321.19 of the Revised Code [SLA] 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.

In doing so, the General Assembly expressly recognized that CCLA single installment lenders could seek to be licensed, and then operate, under Ohio's then existing alternative statutory schemes (such as the SLA and MLA) rather than operating exclusively under the STLA.

In short, the court of appeals' assumption that the "intent" of the General Assembly in enacting H.B. 545 was to preclude single installment consumer lending under the MLA and SLA simply reflects the court's lack of understanding of Ohio's alternative lender licensing laws and the General Assembly's actual decision NOT to bar single installment consumer loans under the MLA and SLA even though the Department provided proposed amendments to those two statutes that would have done so.

C. The Department's Administrative Interpretation As Confirmed By The Attorney General.

Once the STLA was enacted, Mr. Keck and other senior officials of the Department reviewed the statutory language to begin implementation and to develop the Department's enforcement position. The Department concluded that the unambiguous wording of the STLA provides that no person shall engage in the business of making "short-term loans" to a borrower in Ohio without first having obtained a license under the STLA, R.C. 1321.35-.48. R.C. 1321.36(A) (effective September 1, 2008). The STLA goes on to define "short-term loan" to mean "a loan made pursuant to Sections 1321.35 to 1321.48 of the Revised Code." 1321.35(A).

Thus, the Department concluded under the plain language of the STLA, that a "short-term loan" is a loan made by a lender electing to become licensed under the STLA. The Department also concluded that nothing in the wording of the STLA requires a lender to obtain an STLA license to make a single installment consumer loan nor does the wording of the statute require that single installment consumer loans be made exclusively pursuant to the STLA. Rather, the Department concluded that, although the STLA provides a lender with interest rate authority (up to 28%), a lender could make single installment consumer loans under MLA or SLA licenses as long as the lender did not seek interest on the loan based on the STLA's higher interest rate authority. Indeed, Mr. Keck understands this to have been the uniform interpretation and enforcement position of the Department since the enactment of the STLA in 2008.

The Department's interpretation that the STLA is not the exclusive licensing authority under which lenders can make single installment loans was confirmed by the Attorney General shortly after adoption of the STLA in 2008. In an opinion dealing with the impact of the statewide referendum on H.B. 545, the Attorney General concluded that the STLA neither prohibits the making of short-term loans without an STLA license nor requires the licensure under the STLA of persons choosing to make short-term loans under separate statutory lending authority. 2008 Ohio Op. Atty. Gen. 2-365, 2008 WL 4891125 (Nov. 7, 2008). The Attorney General stated that the licensing requirement applies only to lenders electing to make loans under the STLA:

> [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 licensing requirement applies only to lenders making loans under the Short Term Loan Act, and not to all lenders of loans of short duration.

Id. at 5. The Attorney General noted that her interpretation of the STLA "is consistent with the position taken by the Department of Commerce's Division of Financial Institutions." *Id.* at 5.

> Proposition of Law No. I: Sections 1321.51(F) and 1321.57 of the Ohio Mortgage Loan Act ("MLA") permit MLA registrants to make single installment, interest-bearing loans.

I. Single Installment Loans Are Permitted Under The Unambiguous Wording Of The MLA As The Department of Commerce Has Uniformly Recognized For More Than Thirty Years.

A. The Long-Standing Interpretation Of The Department of Commerce.

Contrary to the holding below, the Department has affirmatively permitted single installment lending by MLA registrants for more than thirty years. This decision was again reviewed after the enactment of the STLA. Given the repeal of the CCLA when H.B. 545 became effective, consumer lenders sought registration under the MLA inasmuch as it provided alternative lending authority for single installment loans. In response, the Department re-examined its long-standing view that single installment loans are permitted under the MLA, focusing on the statutory language of the MLA. Mr. Keck was a key player in the Department's analysis. At the conclusion of its review, the Department reaffirmed its longstanding position that the MLA authorizes single installment loans based on the plain language of the statute.

The Department's decision was based in part on the contrast between Section 1321.57(D) of the MLA requiring that "precomputed loans" be repayable in *"monthly installments"* and Section 1321.57(C) which does *not* require "interest-bearing loans" to be repayable in installments (emphasis added). The plain wording of the statute reflects that precomputed loans and interest-bearing loans are subject to different requirements under the MLA. As such, the Department has consistently required that *single* installment loans can ONLY be made under the interest-bearing provisions of the MLA, *i.e.*, Section 1321.57(C), and cannot be made under the

precomputed interest provisions of Section 1321.57(D). The Department consistently enforced this interpretation throughout Mr. Keck's tenure and thereafter, including after the enactment of the STLA.

Given the conclusion that Section 1321.57(C) allows single installment loans by MLA licensees, the Department approved MLA license application of lenders who expressly disclosed that their lending programs envisioned a single installment repayment as long as the lender proposed only interest-bearing loans, such as Mr. Scott's loan. Indeed, long before the STLA was enacted, Mr. Keck specifically remembers advising one MLA registrant that the registrant's proposed single installment loan program would be permitted under the MLA. And the Department never brought an enforcement action against any MLA registrant for making single installment loans even though the Department examined thousands of single installment loans made by MLA registrants annually.

B. R.C. 1321.51(F) Is Not Ambiguous.

R.C. 1321.51(F) defines "interest bearing loan" to mean 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." The Court of Appeals concluded that ambiguity existed as to whether "from time to time" modified "unpaid principal balances outstanding" or, alternatively, "computed, charged and collected." Based on this claimed ambiguity, the court then concluded that it had to read the MLA *in pari materia* with the STLA, which led it to its incorrect assumption as to the intent of the General Assembly to outlaw all short term consumer lending other than that undertaken pursuant to the STLA.

But in Mr. Keck's more than twenty years at the Department, no such ambiguity in R.C. 1321.51(F) was ever found to exist. Rather, the words "from time to time" were always

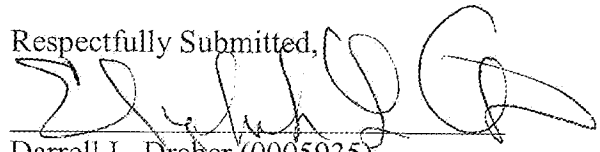
understood to refer to the "principal balances outstanding" from the time the loan is made until the time the loan is repaid. The balances may vary because of prepayments or they may not, but each time the principal balance varies, the daily interest is recomputed based on the new principal balance. That is the way simple interest is calculated and is the most favorable calculation method to the borrower. In his twenty years of state service, Mr. Keck has never seen this language interpreted as the court below held, has never seen the Department or the financial industry construe it as the court below did, and has never heard anyone suggest that it is ambiguous or that it requires multiple installment payments.

CONCLUSION

Ohio's finance laws have been fairly and uniformly enforced by the Department for more than thirty years. The Court of Appeals seriously erred by ignoring this regulatory history when, in fact, the court should have deferred to it. *Maitland v. Ford Motor Company*,103 Ohio St. 3d 463, 468 (2004). And it erred yet again in assuming the STLA was "intended" by the General Assembly to preclude single installment lending under the MLA and the SLA when, if the court had applied the plain language of the statutes and understood the tripartite lender licensing options under Ohio law and the true legislative history, it would not have so erred.

Amicus Mr. Keck believes the decision below is simply wrong and asks the Court to reverse the decision below.

Respectfully Submitted,



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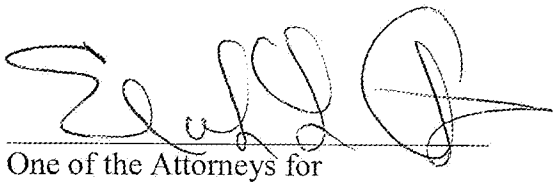

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APPENDIX

Department
of Commerce

Division of Financial Institutions

John R. Kasich, Governor
Andre T. Porter, Director

CERTIFICATION OF RECORDS

THIS IS TO CERTIFY, pursuant to Ohio Revised Code § 1181.11, that this is a true and accurate copy of the original May 8, 2008 email and attachments on file with the Division of Financial Institutions.

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION, at Columbus, Ohio, this 17th day of June 2013.

CHARLES J. DOLEZAL
Superintendent
Division of Financial Institutions
Ohio Department of Commerce

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Subject: Commerce issues

Attachments: HB 545_CF Summary Memo May 2008 (3).doc; HB 545_Suggested Language May 2008.doc

Please contact with any issues, questions or concerns.

Thanks,

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Ted Strickland
Governor

Kimberly A. Zurz
Director

DATE: May 8, 2008

TO: Kimberly Zurz
Director of Commerce

FROM: Leigh Willis
Deputy Superintendent for Consumer Finance

CC: Ernie Davis, Legislative Director
John Reardon, Superintendent

SUBJECT: HB 545

Below please find a summary of the comments and concerns Consumer Finance has regarding the current bill:

1) Database concerns- In its current version, we are very concerned about how the cost of the database implementation and maintenance will be funded. We anticipate a large number of companies may not maintain their license under the new statute which makes it difficult for us to fund the database effort. As passed by the House, the bill would fund the database via a per transaction fee. If there are very few transactions we may have difficulty funding the database as proposed or finding a vendor interested in bidding on the project. We would recommend considering language which would remove the requirement for a database if a significant number of licensees do not renewal under the new act. **We have proposed alternative language in the draft in 1321.46.**

   - Costs based on the Florida model would suggest and initial year 1 cost to the Division of $2-$3 million for the database. That cost coupled with the licensee revenue loss of $1-$1.5 million, the 5% initial transfer from the Consumer Finance Fund into the Consumer Finance Board which will equal $500,000 and the transfer of 5% every quarter thereafter to the Board the Division expects a revenue loss of $5 million year 1 not to mention statutory mandated costs thereafter for a product by most accounts may not exist.

   If the Division does have to do a database we would request more time to implement. We have serious concerns with the requirement on page 79, section 4 for the implementation of the database in only 120 days. It is our understanding it took 6 – 8 months to implement the Florida database and while we could attempt to contract with the same vendor or one of their competitors we would also need to allow time to complete the RFP process before work on the database could begin. We respectfully suggest that 120 days is not sufficient time to locate a vendor and implement a statewide database and request that a six to nine month time line be considered.

2) Financial literacy education fund (proposed Sec. 121.085) – It would be helpful to have a clearer description of the types of financial literacy courses and their proposed content. Different members of the General Assembly may have different ideas of what this should look like and it would be helpful as we develop the curriculum to have a clear understanding of the legislature's intent. **No language suggested**

3) Proposed Sec. 1321.37(A) – We recommend the word "approximate" be removed from line 1130. The Division prefers to know the exact location of the business for examination and notice purposes. **Language in the draft**

4) Proposed Sec. 1321.37(A) – We recommend removal of the following language in lines 1139 – 1141: "except that applications for original licenses issued on or after the first day of July for any year shall be accompanied by an original licensee fee of five hundred dollars". The Division prefers that application fees not be prorated for any of our license types. This simplifies the accounting concerns and minimizes the number of refunds that must be processed. **Language in the draft**

5) Proposed Sec. 1321.37(B) – As written the bill requires state, federal and civil background checks on all licensees every year. This would be burdensome to the Division and would create a significantly longer renewal process each year. While background checks for in-state individuals can be processed electronically, out-of-state registrants and licensees must still utilize a manual process which can take up to 60 days. We would recommend an alternative such as every three years be considered or that the frequency be allowed to be promulgated in rule by the Division. **No language but we would ask that language be considered that says "on a schedule determined by the Division through rule"**

6) Proposed Sec. 1321.37(B)(4) – This section appears to create an absolute bar against licensure of a person with a theft conviction or guilty plea. Is it the intent of the legislature to grandfather anyone from this provision or would it apply to all current licensees as well? If the intent is to not grandfather current check cash lender licensees, we recommend that it be clearly be indicated in the statute. We would also recommend considering changing the current language to bar anyone with a felony theft conviction in the last 10 years and allow other theft convictions (i.e. misdemeanors, felonies older than 10 years) to be decided by the Division based on a preponderance of the evidence. **No language-FYI SB 185 concerns have been raised**

7) Proposed Sec. 1321.42 (A)(2) – The Division recommends removal of the proposed requirement in lines 1427 - 1428 to warn a registrant of their violation prior to taking action. This creates an additional enforcement hurdle for the Division when attempting to protect consumers. As written, regardless of how many times the act has been violated we would be required to notice the registrant of their violation and catch them continuing to violate the act prior to taking enforcement action. The Division would prefer to have the discretion based on the severity of the offense to take enforcement action the first time we find the violation. **Language in the draft**

8) Proposed Sec. 1321.42(B) – The Division recommends the addition of the ability to fine a person for violations of the act. The current language references only suspension, revocation or refusal of an original or renewal license. One suggestion would be "The superintendent may impose a fine of not more than one thousand dollars for each violation of section 1321.35 to 1321.48 of the Revised Code". **Language in the draft**

9) We would recommend that the legislature consider adding an annual report requirement to this proposal similar to what is required under the Ohio Mortgage Loan Act {1321.55(B)(1)}. This would provide the Division the ability to accumulate additional information that won't be gathered in the database and improve our ability to monitor activity and trends in the industry. **Language in the draft**

10) The Division recommends that additional language to further clarify our ability to refer cases to the Attorney General be added. We would recommend the following language from 1321.48(F): This section does not prevent the division from releasing information relating to licensees to the attorney general for purposes of that office's administration of Chapter 1345 of the Revised Code. Information the division releases to the attorney general pursuant to this section remains privileged and confidential, and the attorney general may not disclose the information except by introduction into evidence in connection with the attorney general's administration on Chapter 1345 of the Revised Code or as authorized by the superintendent. [See 1322.061(D) prior to SB 185] **Language in the draft**

11) We would also recommend that a recordkeeping requirement be added to this proposed legislation and we would suggest tracking the language from the current Small Loan Act 1321.09(A). **Language in the draft**

12) 1349.71 changes the method as outlined in SB 185 for appointment of the Consumer Finance Board. The Division would suggest the appointments remain consistent with SB 185 or mirror every DFI board and the appointments be made by the Governor with the advice and consent of the Senate. **Language in the draft**

13) **LSC change** In the draft that attempts to include short term loans be subject to the CSPA there appears to be a drafting oversight which would exclude mortgage loans from the CSPA due to where the language was inserted. **The Division would advocate this change be made.**

14) **1321.15** The Division suggests that to stop a possible abuse of the small loan act a change be made to clarify that a small loan lender could only charge an origination fee once. $300 loan split into 3 $100 loans with three separate fees conceivably are allowed under the small loan act now. **Language in the draft-policy**

1321.15 Limitation of charges - determination of indebtedness.

(A) No licensee shall knowingly induce or permit any person, jointly or severally, to be obligated, directly or contingently or both, under more than one contract of loan at the same time for the purpose or with the result of obtaining greater charges or a higher rate of interest than would otherwise be permitted upon a single loan made under sections 1321.01 to 1321.19 of the Revised Code.

(B) No licensee shall charge, contract for, or receive, directly or indirectly, interest and charges greater than such licensee would be permitted to charge, contract for, or receive without a license under sections 1321.01 to 1321.19 of the Revised Code on any part of an indebtedness for one or more than one loan of money if the amount of such indebtedness is in excess of five thousand dollars.

(C) For the purpose of the limitations set forth in this section, the amount of any such indebtedness shall be determined by including the entire obligation of any person to the licensee for principal, direct or contingent or both, as borrower, indorser, guarantor, surety for, or otherwise, whether incurred or subsisting under one or more than one contract of loan, except that any contract of indorsement, guaranty, or suretyship that does not obligate the indorser, guarantor, or surety for any charges in excess of eight per cent per annum, is not included in such entire obligation. If a licensee acquires, directly or indirectly, by purchase or discount, bona fide obligations for goods or services owed by the person who received such goods or services to the person who provided such goods or services, then the amount of such purchased or discounted indebtedness to the licensee shall not be included in computing the aggregate indebtedness of such borrower to the licensee for the purpose of the prohibitions set forth in this section.

(D) Except where the annual percentage rate is 25% or less as calculated in accordance with the federal Truth in Lending Act (i) no licensee shall make a loan under sections 1321.01 to 1321.19 of the Revised Code having a term of less than three months or a loan having less than three installments; and (ii) no regularly scheduled installment on a loan under sections 1321.01 to 1321.19 of the Revised Code shall be more than twice as large as the average of the earlier scheduled payments.

1321.59 Prohibited acts.

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

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

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

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

(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 having a term of less than three months or a loan having less than three installments; (ii) no regularly scheduled installment on a loan under sections 1321.51 to 1321.60 of the Revised Code shall be more than twice as large as the average of the earlier scheduled payments;

Department of Commerce

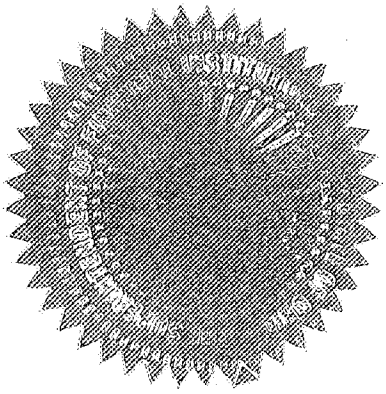
Division of Financial Institutions

John R. Kasich, Governor
Andre T. Porter, Director

CERTIFICATION OF RECORDS

THIS IS TO CERTIFY, pursuant to Ohio Revised Code § 1181.11, that this is a true and accurate copy of the original May 9, 2008 email on file with the Division of Financial Institutions.

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION, at Columbus, Ohio, this 15th day of June 2013.



CHARLES J. DOLEZAL
Superintendent
Division of Financial Institutions
Ohio Department of Commerce

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Davis, Ernie

From: Davis, Ernie
Sent: Friday, May 09, 2008 8:36 AM
To: 'MatthewW@mailr.sen.state.oh.us'
Subject: Re: Commerce issues

Ok. The insert language is designed to not allow the payday model in the small loan act by not allowing a loan term of less than 3 months and a payment structure. Again we were trying to close a loophole that you may or may not want close. If you need to talk more give me a call. I apologize it wasn't expressly stated in the memo.
Ernie Davis
Ohio Department of Commerce
Legislative Director
W 614-644-7050
C 614-905-6713

-----Original Message-----
From: Whatley, Matthew <MatthewW@mailr.sen.state.oh.us>
To: Davis, Ernie
Sent: Fri May 09 08:24:13 2008
Subject: RE: Commerce issues

OK, that makes sense but leads me to one other question and that is, what are the 2 new section in 1321.15 (D) and 1321.59 (E) for? I just can't match them up with your bullet point sheet.

-----Original Message-----
From: Davis, Ernie [mailto:Ernie.Davis@com.state.oh.us]
Sent: Friday, May 09, 2008 8:15 AM
To: Whatley, Matthew
Subject: RE: Commerce issues

I'll double check with the Division but I'm fairly certain the way we get there is with the insertion of "greater charges or" in 1321.15. We know they can't collect more interest but the RC is silent about fees in 1321.15. The Division saw this as a way that someone could transition into the small loan act by charging more fees conceivably by breaking the loans out in different amounts in one contract. The language is already strewn through 1321.59.

As soon as Leigh gets in and I can double check I'll call.

Ernie Davis
Legislative Director
Ohio Department of Commerce
77 S. High St. 23rd Floor
Columbus, OH 43215
P-614-644-7050
F-614-728-7554
C-614-905-6713
This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

-----Original Message-----
From: Whatley, Matthew [mailto:MatthewW@mailr.sen.state.oh.us]
Sent: Thursday, May 08, 2008 8:54 PM
To: Davis, Ernie
Subject: RE: Commerce issues

Thanks again Ernie. I do have one quick question that we may need to discuss by phone in the morning. On point #14, I get what you guys are trying to do but when I read the draft language for 1321.15 and 1321.59, I can't figure out how you get there. I think I just need you or Leigh to walk me through it real quick. Talk to you tomorrow.

Matt

-----Original Message-----
From: Davis, Ernie [mailto:Ernie.Davis@com.state.oh.us]
Sent: Thursday, May 08, 2008 6:38 PM
To: Whatley, Matthew
Subject: Re: Commerce issues

I have my cell on 24-7 so call me if you have any ?

Thanks.
Ernie Davis
Ohio Department of Commerce
Legislative Director
W 614-644-7050
C 614-905-6713

-----Original Message-----
From: Whatley, Matthew <MatthewW@mailr.sen.state.oh.us>
To: Davis, Ernie
Sent: Thu May 08 18:34:31 2008
Subject: RE: Commerce issues

Thanks Ernie

From: Davis, Ernie [mailto:Ernie.Davis@com.state.oh.us]
Sent: Thursday, May 08, 2008 6:30 PM
To: Frisina, Katherine; Perera, Brian Major; Whatley, Matthew; ERoush@maild.sen.state.oh.us; Jade Davis; Long, Kris; Goodnight, Terra
Subject: Commerce issues

Please contact with any issues, questions or concerns.

Thanks,

Ernie Davis

Legislative Director

Ohio Department of Commerce

77 S. High St. 23rd Floor

Columbus, OH 43215

P-614-644-7050

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