November 7, 2008

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SYLLABUS: 2008-036

1. A person licensed under the Check-Cashing Lender Law (R.C. 1315.35-.44) is permitted to make loans under the terms of that law while also holding a license under the Short Term Loan Act (R.C. 1321.35-.48), recently enacted in Sub. H.B. 545, 127th Gen. A. (eff. Sept. 1, 2008, except Section 3, which is the subject of a pending referendum).

2. The cross-references to R.C. 1315.35-.44 (the Check-Cashing Lender Law) that are deleted by Section 1 of Sub. H.B. 545 from various sections of the Revised Code are not affected by the pending referendum on the approval or rejection of Section 3 of Sub. H.B. 545 and will remain deleted regardless of the outcome of the referendum.

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November 7, 2008

OPINION NO. 2008-036

Kimberly A. Zurz, Director
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Division of Financial Institutions
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Dear Director Zurz:

We have received your request for an opinion on matters arising from the pending referendum on portions of Sub. H.B. 545 relating to laws governing payday lending and short-term loans. You have asked the following questions:

1. Given the wording of R.C. 1321.39, can a person licensed under the Check Cashing Loan Act still be permitted to make loans under its terms while also holding a license under the new Short Term Loan Act; or do the restrictions in R.C. 1321.39 also apply to any "payday loan" absent the surrender of its short-term lender license?

2. Are the deleted cross-references to the check-cashing loan code sections as set forth in Section 1 of Sub. H.B. 545 affected by the referendum, or do the cross-references remain deleted independent of the referendum's outcome?

For the reasons discussed below, we conclude:

1. A person licensed under the Check-Cashing Lender Law (R.C. 1315.35-.44) is permitted to make loans under the terms of that law while also holding a license under the Short Term Loan Act (R.C. 1321.35-.48), recently enacted in Sub. H.B. 545, 127th Gen. A. (eff. Sept. 1, 2008, except Section 3, which is the subject of a pending referendum).

2. The cross-references to R.C. 1315.35-.44 (the Check-Cashing Lender Law) that are deleted by Section 1 of Sub. H.B. 545 from various sections of the Revised Code are not affected by the pending referendum on the approval or rejection of Section 3 of Sub. H.B. 545 and will remain deleted regardless of the outcome of the referendum.

Background Information

Sub. H.B. 545 was passed by the 127th General Assembly on May 14, 2008, and signed by the Governor on June 2, 2008, with an effective date of September 1, 2008. The act makes various legislative changes pertaining to payday lending and short-term loans. The changes that are relevant to this opinion are as follows: Section 3 of Sub. H.B. 545 repeals R.C. 1315.35-.44, known as the Check-Cashing Lender Law or Check Cashing Loan Act. Section 1 of Sub. H.B. 545 enacts R.C. 1321.35-.48, known as the Short Term Loan Act, and, in various previously-existing provisions of the Revised Code, deletes references to R.C. 1315.35-.44 (the Check-Cashing Lender Law). Section 4 addresses the effective dates of licenses under both the Check-Cashing Lender Law and the Short Term Loan Act.

The question whether to approve or reject Section 3 of Sub. H.B. 545 has been submitted to the electors by referendum petition for consideration in the election on November 4, 2008. *See* Ohio Const. art. II, § 1. Pending that election, the repeal called for by Section 3 (repeal of R.C. 1315.35-.44, the Check-Cashing Lender Law) has been stayed. If Section 3 is approved by the voters, the Check-Cashing Lender Law will be repealed; if Section 3 is rejected by the voters, the Check-Cashing Lender Law will remain in effect.

Regardless of the outcome of the referendum election, the portions of Sub. H.B. 545 not subject to the referendum became effective on September 1, 2008. *See* Ohio Const. art. II, § 1c (if a referendum petition is filed against a section of a law passed by the General Assembly, "the remainder of the law shall not thereby be prevented or delayed from going into effect"). These portions include the Short Term Loan Act (R.C. 1321.35-.48) and uncodified Section 4. Section 4 states that licenses issued under the Check-Cashing Lender Law remain in effect until their renewal dates and are recognized as licenses under the newly-enacted Short Term Loan Act, with the licensees thereafter being subject to all provisions of the Short Term Loan Act.[1]

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[1] Section 4 of Sub. H.B. 545 states:

> **Section 4.** (A) All licenses issued pursuant to [R.C. 1315.35-.44], 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 [R.C. 1315.35-.44] 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 [R.C.

In enacting Sub. H.B. 545, the General Assembly anticipated that the Check-Cashing Lender Law would be repealed and that licenses under the Check-Cashing Lender Law would become licenses under the Short Term Loan Act. Instead, you have informed us that, because of the referendum, it is the view of the Department of Commerce's Division of Financial Institutions that, as of September 1, 2008, current check-cashing loan licensees will retain their present licenses under the Check-Cashing Lender Law and will also be provided licenses under the Short Term Loan Act.

Effect of the Short Term Loan Act on a Person Licensed Under the Check-Cashing Lender Law

Your first question is whether, given the wording of R.C. 1321.39, a person licensed under the Check-Cashing Lender Law can still be permitted to make loans under its terms while also holding a license under the new Short Term Loan Act, or whether the restrictions in R.C. 1321.39 also apply to any "payday loan" absent the surrender of the short-term lender license. In other words, the question is whether a person licensed under the previously-enacted Check-Cashing Lender Law (that is currently in effect and, if Section 3 is rejected by the voters, will remain in effect) may continue to make loans under the Check-Cashing Lender Law while also holding a license under the newly-enacted Short Term Loan Act, or whether the restrictions in R.C. 1321.39 (which is part of the Short Term Loan Act) apply to any "payday loan," including loans under the Check-Cashing Lender Law, unless the person ceases to be licensed under the Short Term Loan Act.

This question arises because, although the Check-Cashing Lender Law and the Short Term Loan Act overlap in some respects, they vary in many respects and provide authority for the issuance of different kinds of loans with different terms.[2] In particular, the newly-enacted

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> 1321.35-.48] as enacted by this act, and such license holder thereafter is subject to all provisions of [R.C. 1321.35-.48].
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> (B) If any person licensed under [R.C. 1315.35-.44] on the effective date of this section applies for a license to operate under [R.C. 1321.01-.19] for the 2008 licensing period ending June 30, 2009, that person shall pay only one-half of the license fee provided for under [R.C. 1321.03].

The Ohio Legislative Service Commission's description of Section 4, prepared prior to the filing of the referendum petition, includes the following: "All licenses previously issued under the Check-Cashing Lender Law remain in effect until their time of renewal. At that point, the license will be recognized as a valid license under the Short-Term Lender Law." Ohio Legislative Service Comm'n, 127th Gen A., Sub. H.B. 545, Final Analysis, at p. 3 n.1.

[2] *See* Ohio Legislative Service Comm'n, 127th Gen A., Sub. H.B. 545, Final Analysis, at p. 3 ("[t]he act repeals the Check-Cashing Lender Law, and enacts the Short-Term Lender Law

Short Term Loan Act permits a licensee under R.C. 1321.35-.48 to engage in the business of making loans, provided that each loan complies with various conditions, including a limit of $500, a duration of not less than 31 days, and inclusion of a provision offering an optional extended payment plan. R.C. 1321.39. In contrast, a licensee under the previously-enacted Check-Cashing Lender Law is permitted to loan amounts up to $800 for terms shorter than 31 days (minimum duration unrestricted by statute; maximum duration six months), with no requirement for an extension of the repayment term of the loan. R.C. 1315.39. In addition, there are differences regarding the amounts of interest and other fees and charges that may be collected. *See* R.C. 1315.39-.40 (Check-Cashing Lender Law authorizes interest at a rate of 5% per month or fraction of a month, plus various fees and charges); R.C. 1321.40 (Short Term Loan Act authorizes "[i]nterest calculated in compliance with 15 U.S.C. 1606, and not exceeding an annual percentage rate greater than [*sic*] twenty-eight per cent," plus various fees and charges).

The Check-Cashing Lender Law and the Short Term Loan Act are structured as two separate sets of statutes. Each enables a lender to be licensed by the Superintendent of Financial Institutions and requires that loans made under that license comply with requirements applicable to that licensee under the appropriate set of statutes. Because the legislation that enacted the Short Term Loan Act repealed the Check-Cashing Lender Act, it appears that the General Assembly did not intend that both sets of statutes be in effect at the same time. However, nothing in their terms prevents the Check-Cashing Lender Law and Short Term Loan Act from being in effect at the same time.

Licensure under the Check-Cashing Lender Law or the Short Term Loan Act exempts a licensee from the interest rate loan limits of the state's criminal usury laws.[3] However, neither the Check-Cashing Lender Law nor the Short Term Loan Act Law prohibits the making of loans

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(R.C. 1321.35 to 1321.48), which is based on the Check-Cashing Lender Law, but with a number of substantive changes" (footnote omitted)).

[3] R.C. 2905.21(H) defines "[c]riminal usury" to mean "illegally charging, taking, or receiving any money or other property as interest on an extension of credit at a rate exceeding twenty-five per cent per annum or the equivalent rate for a longer or shorter period," unless the rate of interest is otherwise authorized by law or the transaction is within an immediate family. Both the Check-Cashing Lender Law and the Short Term Loan Act authorize a licensee to exceed the criminal usury limit of 25% when making loans that comply with the conditions specified in the relevant statutes. *See* R.C. 1315.39-.40; R.C. 1321.40.

There are also civil limits on interest rates. R.C. 1343.01 establishes a maximum rate of 8% per annum, subject to various exceptions. Loans of the sort made under the Check-Cashing Lender Law or the Short Term Loan Act come within the exception set forth in R.C. 1343.01(A)(5), which applies to an instrument that is "payable on demand or in one installment and is not secured by household furnishings or other goods used for personal, family, or household purposes."

without a license or requires the licensure of persons making loans. Instead, each consists of a set of statutes applying to loans made under its provisions. For example, R.C. 1321.36(A) (part of the Short Term Loan Act) states that "[n]o person shall engage in the business of making short-term loans to a borrower in Ohio . . . without first having obtained a license from the superintendent of financial institutions under [R.C. 1321.35-.48]." Although this might appear to impose a broad licensing requirement, the 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.

Similarly, R.C. 1315.36 (part of the Check-Cashing Lender Law) states that "[n]o check-cashing business shall engage in the business of making loans under [R.C. 1315.35-.44] without first having obtained a license from the superintendent of financial institutions under [R.C. 1315.35-.44]." The reference to loans under R.C. 1315.35-.44 requires only that a business be licensed under the Check-Cashing Lender Law before it can act under the Check-Cashing Lender Law.

The language of the statutory provisions thus permits a person to seek licensure under the Check-Cashing Lender Law, the Short Term Loan Act, or both laws. This is consistent with the position taken by the Department of Commerce's Division of Financial Institutions, as set forth in your request letter and discussed above.[4]

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[4] That a person may seek licensure under more than one lending law is reflected in Section 4 of Sub. H.B. 545, which recognizes, in division (B), that a person licensed under the Check-Cashing Lender Law on September 1, 2008, may apply for a license to operate under R.C. 1321.01-.19 (the Small Loan Act). *See* note 1, *supra*. Section 1 of Sub. H.B. 545 amends R.C. 1321.02 by deleting a reference to R.C. 1315.35-.44 (the Check-Cashing Lender Law) that excludes licensees under the Check-Cashing Lender Law from the application of the Small Loan Act, and by inserting a reference to R.C. 1321.35-.48 (the Short Term Loan Act) that includes licensees under the Short Term Loan Act within that exception to the applicability of the Small Loan Act. *See* R.C. 1321.02 (subject to certain exceptions applicable to persons operating under other authority, "[n]o person shall engage in the business of lending money, credit, or choses in action in amounts of five thousand dollars or less, or exact, contract for, or receive, directly or indirectly, on or in connection with any such loan, any interest and charges that in the aggregate are greater than the interest and charges that the lender would be permitted to charge for a loan of money if the lender were not a licensee, without first having obtained a license from the division of financial institutions under [R.C. 1321.01-.19]"); *see also* R.C. 1321.13(A) ("[n]otwithstanding any other provisions of the Revised Code, a licensee may contract for and receive interest, calculated according to the actuarial method, at a rate or rates not exceeding twenty-eight per cent per year on that portion of the unpaid principal balance of the loan not exceeding one thousand dollars and twenty-two per cent per year on any part of the unpaid

A question as to whether a person licensed under the Check-Cashing Lender Law is permitted to make loans under the terms of that law while also holding a license under the Short Term Loan Act may arise under R.C. 1321.39, which states that "[a] licensee under [R.C. 1321.35-.48] may engage in the business of making loans provided that each loan meets all of the following conditions" and lists various conditions that apply to loans, including the conditions described earlier.[5] The question is whether a person licensed under the Short Term

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principal balance exceeding one thousand dollars"); R.C. 1321.15(A) ("[n]o 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 a higher rate of interest or greater charges than would otherwise be permitted upon a single loan made under [R.C. 1321.01-.19]"); R.C. 1321.15(B) ("[n]o 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 [R.C. 1321.01-.19] 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").

[5] Other provisions raising similar issues appear elsewhere in the Short Term Loan Act. For example, R.C. 1321.41 states in part:

> No person licensed pursuant to [R.C. 1321.35-.48] shall do any of the following:
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> (A) Violate [R.C. 1321.36];
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> (B) *Make a loan that does not comply with [R.C. 1321.39]*;
>
> (C) *Charge, collect, or receive*, directly or indirectly, *any additional fees, interest, or charges in connection with a loan, other than fees and charges permitted by [R.C. 1321.40]* and costs or disbursements to which the licensee may become entitled to [*sic*] by law in connection with any civil action to collect a loan after default;
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> . . . . (Emphasis added.)

See also, e.g., R.C. 1321.41(J) (a Short Term Loan Act licensee shall not "[e]ngage in any device or subterfuge to evade the requirements of [R.C. 1321.35-.48] including assisting a borrower to obtain a loan on terms that would be prohibited by [R.C. 1321.35-.48] . . ."); R.C. 1321.41(M) (a Short Term Loan Act licensee shall not "[r]ecommend to a borrower that the borrower obtain a loan for a dollar amount that is higher than the borrower has requested"); R.C. 1321.41(Q) (a Short Term Loan Act licensee shall not "[o]ffer any incentive to a borrower in exchange for the borrower taking out multiple loans over any period of time, or provide a short-term loan at no charge or at a discounted charge as compensation for any previous or future business"); R.C. 1321.41(R) (a Short Term Loan Act licensee shall not "[m]ake a loan to a borrower if the borrower has received a total of four or more loans, from licensees, in the calendar year").

Loan Act is permitted, while acting under a Check-Cashing Lender Law license, to make a loan that is authorized under the Check-Cashing Lender Law but does not meet the conditions set forth in R.C. 1321.39.[6]

As discussed above, the terms of the Short Term Loan Act apply, in general, to the business of making "[s]hort-term loans" (defined in R.C. 1321.35 as loans made under the Short Term Loan Act) and govern persons licensed pursuant to R.C. 1321.35-.48 in their capacities as licensees. Read in context, the conditions set forth in R.C. 1321.39 thus refer to a short-term loan that a licensee under the Short Term Loan Act is authorized to make. This interpretation is consistent with the provisions of Section 4 of Sub. H.B. 545 that provide for a license holder under the Check-Cashing Lender Law to be recognized as a valid license holder under the Short Term Loan Act and permit a license holder under the Check-Cashing Lender Law to apply for a license under the Small Loan Act. *See* notes 1 and 4, *supra.*

The interpretation adopted in this opinion indicates, under R.C. 1321.41(B), that a loan "does not comply" with R.C. 1321.39 only if it is a loan made by a licensee under the Short Term Loan Act that should meet the conditions set forth in R.C. 1321.39 and does not meet those conditions. Because a loan made under the Check-Cashing Lender Law is not required to meet the terms set forth in the Short Term Loan Act, its failure to meet those terms does not mean that it "does not comply" with R.C. 1321.39; rather, R.C. 1321.39 is simply inapplicable. Under this interpretation, division (C) of R.C. 1321.41, which prohibits the collection of fees, interest, or charges other than those permitted by R.C. 1321.40, also applies only to a loan that is made under the Short Term Loan Act and is subject to the terms of the Short Term Loan Act, including R.C. 1321.40. *See* R.C. 1321.40 ("[a] person licensed pursuant to [R.C. 1321.35-.48] may charge, collect, and receive the following fees and charges in connection with a short-term loan"). If a person has a valid license to make another type of loan, such as a loan under the Check-Cashing Lender Law, that loan is not a short-term loan subject to the limitations set forth in R.C. 1321.40.

[6] The Short Term Loan Act uses both the term "loan" and the term "short-term loan." There may be questions in particular instances as to whether different meanings are intended. *See, e.g.,* R.C. 1321.40 (using both the term "loan" and the term "short-term loan" in connection with the limitations of fees and charges under the Short Term Loan Act). *See generally Henry v. Trustees of Perry Township*, 48 Ohio St. 671, 30 N.E. 1122 (1891) (syllabus, paragraph one) ("[i]n the construction of a statute, it is, as a general rule, reasonable to presume that the same meaning is intended for the same expression in every part of the act. But the presumption is not controlling, and where it appears that by giving it effect an unreasonable result will follow, and the manifest object of the statute be defeated, a court is at liberty to disregard the presumption, and attach a meaning to the words in question, which will make the act consistent with itself, and carry out the true purpose and intent of the law makers").

It might, however, be argued more broadly that, as used in R.C. 1321.39, the term "loan" applies to any loan and not only to loans subject to the Short Term Loan Act. The provisions of R.C. 1321.39 are not by their terms limited to loans meeting the statutory definition of "[s]hort-term loan" as a loan made under the Short Term Loan Act. R.C. 1321.35(A). The argument, therefore, is that, because R.C. 1321.39 uses the more general term "loan," it prevents a Short Term Loan Act licensee from acting in the capacity of a Check-Cashing Lender Law licensee and making a loan that does not follow all the requirements set forth in R.C. 1321.39.

Such a broad reading of R.C. 1321.39 would prevent a Short Term Loan Act licensee from diverging in any respect from the requirements set forth in R.C. 1321.39, regardless of whether a particular loan is subject to the Short Term Loan Act and regardless of whether the person makes the loan in a capacity other than that of licensee under the Short Term Loan Act. This interpretation could render the making of a loan under the Check-Cashing Lender Law by a licensed person, acting in accordance with all substantive provisions applicable to that loan, an unfair or deceptive act or practice in violation of the Consumer Sales Practices Act, *see* R.C. 1321.44; R.C. 1345.02, or a criminal offense, *see* R.C. 1321.99(G). However, this broad interpretation appears to extend beyond the language and intent of the legislation, as discussed above, and to be inconsistent with Section 4 of Sub. H.B. 545. *See* notes 1 and 4, *supra.*[7] Accordingly, we reject this broad interpretation and conclude, for the reasons set forth above, that the conditions set forth in R.C. 1321.39 apply only to loans that are subject to the Short Term Loan Act.[8]

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[7] The Ohio Legislative Service Commission's description of Section 4 of Sub. H.B. 545 includes the following:

> The act prohibits a short-term loan licensee from violating the act's licensing requirements, from making loans that do not comply with the act's loan terms and conditions requirements, from collecting unauthorized fees and charges, and from collecting treble damages in connection with a civil action to collect a loan after default.

Ohio Legislative Service Comm'n, 127th Gen A., Sub. H.B. 545, Final Analysis, at p. 11.

[8] Provisions similar to those in the Short Term Loan Act appear in the Check-Cashing Lender Law. In particular, R.C. 1315.39(A) states that "[a] check-cashing business licensed under [R.C. 1315.35-.44] may engage in the business of making loans provided that each loan meets all of the following conditions," and R.C. 1315.41 states in part as follows:

> No check-cashing business licensed pursuant to [R.C. 1315.35 to 1315.44] shall do any of the following:
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> (A) Violate [R.C. 1315.36];
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> (B) *Make a loan that does not comply with [R.C. 1315.39(A)]*;

It appears, accordingly, that a person may be licensed under both the Check-Cashing Lender Law and the Short Term Loan Act and, under each license, make loans that come within the terms applicable to that license. If there is a loan that meets the conditions of both sets of statutes, that loan could be made under either set of statutes by a person licensed to act under that set of statutes.

We conclude, therefore, that a person licensed under the Check-Cashing Lender Law (R.C. 1315.35-.44) is permitted to make loans under the terms of that law while also holding a license under the Short Term Loan Act (R.C. 1321.35-.48), recently enacted in Sub. H.B. 545, 127th Gen. A. (eff. Sept. 1, 2008, except Section 3, which is the subject of a pending referendum).

Effect of Referendum on Deleted Cross-References to R.C. 1315.35-.44

Your second question asks whether the deleted cross-references to provisions of the Check-Cashing Lender Law set forth in Section 1 of Sub. H.B. 545 are affected by the referendum, or whether the cross-references remain deleted independent of the outcome of the referendum.

Amendments made in Section 1 of Sub. H.B. 545 delete references to R.C. 1315.35-.44 (the Check-Cashing Lender Law) in several instances, as follows: (1) in R.C. 1181.05(A) and R.C. 1181.21, amendments delete licensees under R.C. 1315.35-.44 from inclusion in the definition of "consumer finance company" and from provisions governing state authority over consumer finance companies; (2) in R.C. 1315.99(A), amendments delete R.C. 1315.41 from a provision imposing criminal penalties for statutory violations; (3) in R.C. 1321.02, amendments delete licensees under R.C. 1315.35-.44 from an exemption from the licensing requirements of R.C. 1321.01-.19 (the Small Loan Act); (4) in R.C. 1321.21, amendments delete fees, charges,

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> (C) *Charge, collect, or receive*, directly or indirectly, *any additional fees or charges in connection with a loan, other than fees and charges permitted by [R.C. 1315.39 and R.C. 1315.40]* and costs or disbursements to which the check-cashing business may become entitled to [*sic*] by law in connection with any civil action to collect a loan after default;
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> . . . . (Emphasis added.)

We apply the same analysis to these provisions as to the Short Term Loan Act, restricting the prohibition against making a loan that does not comply with R.C. 1315.39(A) to loans that are covered by R.C. 1315.39, and applying the interest rates and fees under R.C. 1315.39-.40 to loans made under the Check-Cashing Lender Law. This analysis is consistent with the fact that the prohibition of R.C. 1315.41 applies to a "check-cashing business licensed pursuant to [R.C. 1315.35 -.44]" and with the provisions of Section 4 of Sub. H.B. 545 that permit a license holder under the Check-Cashing Lender Law to be recognized as a valid license holder under the Short Term Loan Act. *See* notes 1, 4, and 5, *supra*.

penalties, and forfeitures collected under the Check-Cashing Lender Law from the amounts to be paid to the Superintendent of Financial Institutions to be credited to the Consumer Finance Fund and used for administrative purposes, and delete the Check-Cashing Lender Law from provisions that may be administered with those amounts; and (5) in R.C. 2307.61(A), amendments delete transactions under R.C. 1315.35-.44 from an exemption from liability for damages in certain civil actions by persons injured by criminal acts. *See also* note 4, *supra.* The cross-references are part of the statutory scheme under which the Check Cashing Loan Act has been administered, and their deletion may affect the operation of the Check Cashing Loan Act, if its repeal is rejected by the voters.[9]

The power to submit a referendum petition of the type here at issue is derived from Ohio Const. art. II, § 1, which vests the legislative power of the state in the General Assembly, but reserves to the people the power to adopt or reject, by referendum vote, laws or sections of laws passed by the General Assembly. *See also* Ohio Const. art. II, §§ 1c, 1d, 1g. R.C. 3519.01(B) prescribes the procedure for filing a referendum petition "against any law, section, or item in any law." The Secretary of State certifies to the county boards of elections "the form and wording of state referendum questions and issues, as they shall appear on the ballot." R.C. 3501.05(I).

The referendum petition here at issue states, in its Title:

> A referendum petition on the *repeal of* Ohio's Check-Cashing Lender Law passed by the 127th General Assembly as *Section 3 of Substitute House Bill No 545* on May 20, 2008, and signed by the Governor and filed with the Secretary of the State on June 2, 2008. (Emphasis added.)

By its terms, the referendum asks the electors to approve or reject Section 3 of Sub. H. B. 545, which reads as follows:

> **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.

No part of the referendum petition proposes to change any portion of Sub. H.B. 545 other than Section 3.

The ballot language by which the referendum is submitted to the electors similarly informs the voter that Section 3 of Sub. H.B. 545 is the matter at issue, stating in part: "Under

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[9] In addition, R.C. 1321.37(B)(3), as enacted by Sub. H.B. 545, refers to "former sections 1315.35 to 1315.44 of the Revised Code." If Section 3 is rejected by the voters, the word "former" will not be accurate.

the referendum, voters must decide whether Section 3 of H.B. 545 should go into effect." The specific question presented to voters is: "Shall Section 3 of H.B. 545 be approved?"[10]

In the instant case, both the referendum petition and the ballot language present the referendum as a question of the approval or rejection of Section 3 of Sub. H.B. 545. That is the only matter made subject to referendum in the referendum petition and, correspondingly, is the subject set forth for the vote of the electorate in the ballot language. Therefore, Section 3 of Sub. H.B. 545 is the only matter that may be affected by the vote of the electorate upon the referendum. The referendum cannot approve or reject any portion of Sub. H.B. 545 other than Section 3.[11]

Your question pertains particularly to portions of Section 1 of Sub. H.B. 545 that delete references to R.C. 1315.35-.44, the provisions of the Check-Cashing Lender Law. The essence of the inquiry is whether the rejection of Section 3 of Sub. H.B. 545 (which would have the effect of retaining the Check-Cashing Lender Law) would somehow revive the references to the Check-Cashing Lender Law that previously appeared in other Revised Code provisions and were deleted by Section 1 of Sub. H.B. 545. The answer must be that, regardless of the result of the election on the referendum, the references to R.C. 1315-.35-.44 that were deleted by Section 1 of Sub. H.B. 545 will remain deleted.

This result is compelled by the fact that the referendum petition addressed only Section 3 of Sub. H.B. 545 and did not ask to have the electors approve or reject any action taken by the General Assembly in Section 1 of Sub. H.B. 545. Therefore, the General's Assembly's action in enacting Section 1 remains unchallenged, and the deletions enacted by Section 1 remain in effect. *See* Ohio Const. art. II, § 1 (the referendum power includes the power, with limited exceptions, to "adopt or reject any law, *section of any law* or any item in any law appropriating money passed by the general assembly" (emphasis added)); R.C. 3519.01(B)(1) (procedure for filing a referendum petition "against any law, section, or item in any law").

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[10] *See generally State ex rel. Bailey v. Celebrezze*, 67 Ohio St. 2d 516, 519, 426 N.E.2d 493 (1981) (it is a general rule that ballot language must provide the voter with a clear statement of the subject matter upon which the vote is taken); *Markus v. Trumbull County Bd. of Elections*, 22 Ohio St. 2d 197, 259 N.E.2d 501 (1970) (syllabus, paragraph 4) ("[t]he text of a ballot statement resulting from a referendum petition must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected"); 2006 Op. Att'y Gen. No. 2006-028, at 2-255.

[11] It is axiomatic that a provision that is clear and unambiguous is given its plain meaning. *See, e.g., State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) ("[w]here the wording of a statute is clear and unambiguous, this court's only task is to give effect to the words used"); *State ex rel. Keller v. Forney*, 108 Ohio St. 463, 466, 141 N.E. 16 (1923) ("[w]here the language is plain there is neither room nor right to construe"); R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage").

It appears that the General Assembly included in Section 1 of Sub. H.B. 545 amendments that deleted references to R.C. 1315.35-.44 because the act was intended to repeal R.C. 1315.35-.44 and the General Assembly assumed that the references would become meaningless. It might be argued that the deleted provisions are an important part of the statutory scheme and should be reinstituted if the Check-Cashing Lender Law is not repealed, or that these (and possibly other changes) would not have been made in Sub. H.B. 545 if the General Assembly had been aware that Section 3 might be rejected by referendum. These arguments, however, are not effective to change the enactments made by the General Assembly in Section 1 of Sub. H.B. 545. A vote on the referendum can affect only the matters set forth in the referendum petition. There is no basis in the referendum process for making additional changes on the basis of speculation as to what the General Assembly might have done if it had anticipated the referendum.

Accordingly, even if Section 3 is rejected by the electors and the repeal of R.C. 1315.35-.44 is voided, that action will not reinstitute the references to R.C. 1315.35-.44 that were deleted in Section 1 of Sub. H.B. 545. Because the referendum petition does not seek the approval or rejection of any part of Section 1 of Sub. H.B. 545, it can have no effect upon any legislative changes made in Section 1.

We conclude, therefore, that the cross-references to R.C. 1315.35-.44 (the Check-Cashing Lender Law) that are deleted by Section 1 of Sub. H.B. 545 from various sections of the Revised Code are not affected by the pending referendum on the approval or rejection of Section 3 of Sub. H.B. 545 and will remain deleted regardless of the outcome of the referendum.

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. A person licensed under the Check-Cashing Lender Law (R.C. 1315.35-.44) is permitted to make loans under the terms of that law while also holding a license under the Short Term Loan Act (R.C. 1321.35-.48), recently enacted in Sub. H.B. 545, 127th Gen. A. (eff. Sept. 1, 2008, except Section 3, which is the subject of a pending referendum).

2. The cross-references to R.C. 1315.35-.44 (the Check-Cashing Lender Law) that are deleted by Section 1 of Sub. H.B. 545 from various sections of the Revised Code are not affected by the pending referendum on the approval or rejection of Section 3 of Sub. H.B. 545 and will remain deleted regardless of the outcome of the referendum.

Respectfully,

Nancy H. Rogers

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