



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Jennifer A. Parker

### Sub. H.B. 489

132nd General Assembly  
(As Passed by the General Assembly)

- Reps.** Dever, Anielski, Antonio, Craig, Hambley, Holmes, Hoops, Hughes, Lepore-Hagan, O'Brien, Patton, Perales, Reineke, Romanchuk, Ryan, Seitz, K. Smith, Thompson, West, Wiggam, Young
- Sens.** Bacon, Burke, Coley, Dolan, Eklund, Gardner, Hackett, Hoagland, Hottinger, Huffman, Jordan, Kunze, LaRose, McColley, O'Brien, Oelslager, Peterson, Sykes, Thomas, Wilson, Yuko

**Effective date:** March 20, 2019

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## ACT SUMMARY

### Financial institutions – general regulation

- Revises the regulations relating to state banks and credit unions with respect to:
  - The frequency of examinations by the Superintendent of Financial Institutions;
  - The reporting and correction of bona fide errors;
  - The retroactive application of the Superintendent's rules.

### Credit Union Law

- Modifies the Credit Union Law with respect to:
  - Membership, voting by members, and members' meetings;
  - The board of directors;
  - Credit committees;
  - Compensation and gifts;

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\* This version updates the effective date.

- Acquisition of real estate and obtaining of service facilities;
- Programs to promote consumer savings;
- The Credit Union Council;
- Service of process for foreign credit unions; and
- The misleading use of a credit union's name.

### **Banking Law: limitation on certain charges**

- Removes the limitation on prepayment or refinancing penalties and discount points applicable to residential mortgage loans made by banks.

### **Data analytics**

- Enables the General Assembly to request that data analytics be conducted on publicly available information regarding state banks and credit unions and the consumer finance companies regulated by the Superintendent.

### **Consumer-related provisions**

- Allows for a private right of action under the provisions of the Banking Law relating to revolving credit agreements and allowable interest rates and fees.
- With respect to mortgage servicers:
  - Prohibits a person from acting as a mortgage servicer without first obtaining a certificate of registration under the Ohio Residential Mortgage Lending Act (RMLA) and makes a violation of this prohibition a fifth degree felony, strict liability offense.
  - Exempts from this registration requirement all entities exempt from the RMLA, including any state or federally chartered depository institution.
  - Requires mortgage servicers to comply with the application requirements, restrictions, record retention requirements, and surety bond requirements of the RMLA.
- Requires a person collecting a debt that is in default and is secured by a junior lien on a residential property to send a specified notice to the debtor relating to that debt.

- Provides a qualified immunity from civil liability to a person collecting such a debt if the person makes a "bona fide error" and takes certain steps after the error is made.

## Receivership

- Modifies the publishing of notice of a receiver's claim procedure in the event of an involuntary liquidation of a bank.

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## TABLE OF CONTENTS

Financial institutions – general regulation.....	4
Examinations .....	4
Bona fide errors.....	4
Application of rules.....	5
Credit Union Law .....	5
Membership: "person" .....	5
Membership: share .....	6
Membership: termination.....	6
Membership: voting and members' meetings .....	6
Board of directors: meetings .....	7
Board of directors: associate directors .....	7
Credit committees .....	7
Compensation and gifts.....	8
Purchase of real estate; service facilities.....	8
Promotion of consumer savings .....	9
Credit Union Council .....	9
Foreign credit union: service of process .....	9
Misleading use of credit union name .....	9
Banking Law: limitation on certain charges .....	10
Data analytics .....	10
Consumer-related provisions .....	10
Banking Law: private right of action.....	10
Residential Mortgage Lending Act: mortgage servicer registration .....	11
Exemptions .....	11
Application; investigation; issuance of certificate of registration.....	12
Designated operations manager.....	13
Examination of records; call reports; electronic records.....	13
Other provisions of the RMLA.....	13
Consumer Protection Law: debt collecting on junior liens.....	14
Notice.....	14
Debt history.....	14
Bona fide errors.....	14
Other provisions.....	15
Receivership: notice of claims procedure .....	15
"General Loan Law" .....	15

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## CONTENT AND OPERATION

### Financial institutions – general regulation

#### Examinations

The act provides an exception to the requirement that state banks be examined at least once every 24-month cycle, and Ohio-chartered credit unions be examined periodically, by the Superintendent of Financial Institutions.<sup>1</sup> Under the act, the Superintendent is generally prohibited from examining a bank or credit union more frequently than once every 24-month cycle **if** the institution meets **both** of the following conditions:

--It has assets of \$10 billion or less.

--It maintains a composite rating of 1 under the Uniform Financial Institutions Rating System.<sup>2</sup> (The Uniform Financial Institutions Rating System is an internal supervisory tool for evaluating the safety and soundness of financial institutions on a uniform basis. A financial institution is given a composite rating based on an evaluation of six components of an institution's financial condition and operations – Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk – often referred to as the "CAMELS" rating. A "1" is the highest rating.)<sup>3</sup> An institution's CAMELS rating used for purposes of the act is not a public record.<sup>4</sup>

But, the Superintendent may conduct more frequent examinations if the Superintendent (1) has reasonable cause to believe that there is a risk of harm to the institution and the examination is necessary to fully determine the risk or how best to address it **or** (2) participates with other state or federal financial institution regulatory authorities in a joint, concurrent, or coordinated examination.<sup>5</sup>

#### Bona fide errors

Under the act, a bank or credit union may not be held civilly liable or subject to sanction by the Superintendent in the event of a "bona fide error" **if** certain actions are

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<sup>1</sup> R.C. 1121.10(A) and 1733.32(A)(3).

<sup>2</sup> R.C. 1121.101(A) and 1733.328(A).

<sup>3</sup> See Federal Deposit Insurance Corporation, *Uniform Financial Institutions Rating System*, <https://www.fdic.gov/regulations/laws/rules/5000-900.html>.

<sup>4</sup> R.C. 1121.101(C) and 1733.328(C).

<sup>5</sup> R.C. 1121.101(B) and 1733.328(B).



taken. For this purpose, "**bona fide error**" means an unintentional clerical, calculation, computer malfunction or programming, or printing error. More specifically, the act protects a state bank or a credit union from civil liability in any lawsuit brought under the Banking Law or Credit Union Law, respectively, or under the Secured Transactions Law, the Retail Installment Sales Act, or the Consumer Sales Practices Act, and from any sanction imposed by the Superintendent, if **all** of the following conditions are met:

(1) The institution shows by a preponderance of the evidence that the compliance failure was not intentional and resulted from a bona fide error despite the maintenance of procedures reasonably adapted to avoid such an error.

(2) Within 60 days after discovering the error, and prior to the initiation of any action by the Superintendent or the receipt of written notice of the error from the consumer, the institution provides the Superintendent and the consumer with written notice of the error and the manner in which the institution intends to make full restitution to the consumer.

(3) The institution promptly makes reasonable restitution to the consumer.

If the above conditions are not met, a consumer injured by the error may sue to recover damages. The lawsuit cannot, however, be maintained as a class action.<sup>6</sup>

### **Application of rules**

The act prohibits the Superintendent from adopting any rule that has a retroactive effective date or applying any rule to conduct that took place exclusively before the rule's effective date.<sup>7</sup>

## **Credit Union Law**

### **Membership: "person"**

The act amends the definition of "person" for purposes of the Credit Union Law, which includes who can become a member of a credit union, to expressly include the estate of a deceased individual.<sup>8</sup>

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<sup>6</sup> R.C. 1121.61 and 1733.53. These provisions apply as well to trust companies and regulated persons under the Banking Law and to regulated individuals under the Credit Union Law.

<sup>7</sup> R.C. 1181.08.

<sup>8</sup> R.C. 1733.01(G).



## **Membership: share**

Under prior law, the subscription to or purchase of a "membership share" of a credit union was a prerequisite for membership in the credit union. The act removes that requirement and, instead, permits a person otherwise qualified for membership to become a member if the person does **any** of the following:

--Purchases a membership in the credit union as provided in the credit union's bylaws;

--Pays an entrance fee established by the credit union's board of directors; or

--Purchases one or more shares in the credit union as provided in the credit union's bylaws.<sup>9</sup>

Prior law also limited any membership or entrance fee to \$1 per member. The act removes that limitation.<sup>10</sup>

## **Membership: termination**

The act permits the senior management officials of a credit union to terminate the membership of, or some or all services to, a member if the member (1) causes a loss to the credit union, (2) commits fraud or any similar misdeed against the credit union or any person on the credit union's premises, (3) engages in inappropriate behavior involving another person, such as physical or verbal abuse of another member or a credit union employee, or (4) otherwise engages in conduct detrimental to the credit union. A member that has its membership terminated or services suspended may, within 90 days of the termination or suspension, appeal the action to the board of directors. The board may affirm, disaffirm, or modify the action, and its decision is final.<sup>11</sup>

## **Membership: voting and members' meetings**

Under prior law, only a voting member present at a meeting "in person, by proxy, or by mail ballot" was entitled to cast a vote on each matter submitted to the membership. And 10% of the voting members of a credit union constituted a quorum for any members' meeting, unless the credit union's articles or bylaws specified otherwise.

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<sup>9</sup> R.C. 1733.01(K) and 1733.05(B).

<sup>10</sup> R.C. 1733.04(A)(4).

<sup>11</sup> R.C. 1733.051.



Under the act, a member may also be considered present at a meeting "by electronic ballot or as otherwise prescribed by a credit union's bylaws." The number necessary for a quorum is changed to 1% of the voting members of the credit union or 25, whichever is lower, unless otherwise provided in the articles or bylaws.<sup>12</sup>

### **Board of directors: meetings**

Under the act, regularly scheduled meetings of the directors must be held at least quarterly.<sup>13</sup>

### **Board of directors: associate directors**

The act permits the board of directors to appoint one or more associate directors to serve in an advisory, ex officio capacity. To be eligible for appointment, the person must meet all of the requirements to serve as a director.

An associate director may participate in board meetings, but cannot vote or otherwise act as or be considered a director. And he or she must sign a confidentiality agreement to ensure that information concerning the credit union remains confidential.<sup>14</sup>

### **Credit committees**

Ongoing law provides that – unless the articles or regulations require the appointment of loan officers in lieu of a credit committee – the credit union must create a credit committee that is responsible for carrying out whatever duties are delegated to it relative to the granting of loans and the supervision of lending practices. It may be delegated the authority to appoint loan officers and delegate to them the power to approve loans.

The act eliminates the requirement that the appointed loan officers, within seven days after the filing of a loan application, provide the credit committee or the board with notice of the application and the action the loan officer took or recommends should be taken with respect to the application. It also removes the prohibition against any person disbursing credit union funds for a loan approved by a loan officer if the person is acting in the capacity of a loan officer.<sup>15</sup>

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<sup>12</sup> R.C. 1733.13 and 1733.14.

<sup>13</sup> R.C. 1733.16.

<sup>14</sup> R.C. 1733.152.

<sup>15</sup> R.C. 1733.19; R.C. 1733.26, repealed.



## Compensation and gifts

Generally, under prior law, officers, directors, and employees of a credit union could not receive anything of value for their services except per diem, wages, or salary they receive as compensation, and directors and committee members could not receive any compensation for their respective services. The act eliminates this general restriction and, instead, permits a credit union to provide the following to its directors and supervisory audit committee members (a board committee that audits the credit union's books at least annually):

- Reasonable compensation for their services as directors or committee members;
- Gifts of minimal value;
- Insurance coverage or other benefits that are available to employees generally; and
- Reimbursement for reasonable expenses incurred on behalf of themselves and their spouses in the performance of their duties as directors or committee members.

The act retains the law that permits credit unions to provide directors and committee members with reasonable health and other types of personal insurance and to reimburse them for expenses incurred in connection with their credit union duties. It also permits the Superintendent of Financial Institutions to adopt, in accordance with the Administrative Procedure Act, any rules necessary to implement these changes.<sup>16</sup>

## Purchase of real estate; service facilities

Under prior law, a credit union – in order to purchase real estate needed for a credit union's present or future operation – was required to notify the Superintendent in writing **and** obtain the Superintendent's prior approval. The act retains the notification requirement but removes the necessity of obtaining approval of the purchase.

Further, the act removes the condition that obtaining service facilities other than its home office is subject to the Superintendent's approval.<sup>17</sup>

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<sup>16</sup> R.C. 1733.22.

<sup>17</sup> R.C. 1733.04(C).



## **Promotion of consumer savings**

The act states that funds deposited in a share account, share certificate, or in any other manner pursuant to a program offered by a credit union to promote consumer savings do *not* constitute valuable consideration for purposes of a scheme of chance under the Ohio Gambling Law.<sup>18</sup> In general, a "scheme of chance" is one in which a participant gives a valuable consideration for a chance to win a prize.<sup>19</sup>

## **Credit Union Council**

The act modifies the qualifications required of certain members of the Credit Union Council in the Division of Financial Institutions, which serves in an advisory capacity to the Superintendent. Under prior law, at least one of the six members appointed to the Council had to be a director or chief executive officer (CEO) of a state-chartered credit union with assets of *not more than \$35 million* and at least one appointed member had to be the director or CEO of a state-chartered credit union with assets of *more than \$50 million*. The act eliminates these two qualifications and, instead, simply requires that at least one appointed member be a director or CEO of a state-chartered credit union with *not more than \$100 million* in assets.<sup>20</sup>

## **Foreign credit union: service of process**

The act eliminates the requirement that, before a credit union chartered under the laws of another state or territory transacted business in Ohio, it had to file documentation with the Superintendent, appointing the Superintendent as the credit union's agent for purposes of service of process in Ohio.<sup>21</sup>

## **Misleading use of credit union name**

The act prohibits any person from using the name of a credit union – without its express written permission – in an advertisement, solicitation, or other promotional material in any way that may mislead another person, or cause another person to be misled, into believing that the person issuing the promotional material is associated with the credit union. A person who violates this prohibition is subject to a civil penalty

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<sup>18</sup> R.C. 1733.24(K).

<sup>19</sup> R.C. 2915.01(C), not in the act.

<sup>20</sup> R.C. 1733.329.

<sup>21</sup> R.C. 1733.39.



of up to \$10,000 for each day the violation is committed or continued. In addition, the credit union may sue for damages, an injunction, or any other available remedy.<sup>22</sup>

### **Banking Law: limitation on certain charges**

Ongoing law generally caps the interest that a bank may charge but permits the bank to charge any other fees and charges the bank and the borrower agree to. With respect to residential mortgage loans, however, prior law limited the amount of discount points and prepayment or refinancing penalties that a bank could collect. The act removes that limitation.<sup>23</sup>

### **Data analytics**

"Data analytics" is the use of qualitative and quantitative techniques to examine data to gain a better understanding of the data itself and the organizations that produced it. Under the act, data analytics may be utilized on data regarding financial institutions and consumer finance companies to gain "impartial, accurate information" to assist the General Assembly in proposing and evaluating legislation. At any time, the Speaker of the House or the Senate President may request the Director of the Legislative Service Commission to arrange for data analytics to be conducted on any publicly available data regarding state banks, credit unions, or any of the consumer finance companies licensed or registered under specified banking laws. The Director may retain necessary consultants for this purpose.<sup>24</sup>

### **Consumer-related provisions**

#### **Banking Law: private right of action**

Ongoing law specifies that the Banking Law generally does not create a private right of action (the ability to sue) for any party other than the Superintendent of Financial Institutions *unless expressly provided otherwise*. The act allows for a private right of action with respect to the banking laws governing revolving credit agreements and those setting forth allowable interest rates and fees.<sup>25</sup>

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<sup>22</sup> R.C. 1733.441.

<sup>23</sup> R.C. 1109.20; R.C. 1343.011, not in the act.

<sup>24</sup> R.C. 103.31.

<sup>25</sup> R.C. 1101.05 and 1109.20; R.C. 1109.18, not in the act.



## Residential Mortgage Lending Act: mortgage servicer registration

The act obligates a nonexempt mortgage loan servicer to register with the Superintendent (see, "**Exemptions**," below). More specifically, the act prohibits a person from acting as a mortgage servicer without first obtaining a certificate of registration from the Superintendent for the principal office and every branch office to be maintained by the person for the transaction of business as a mortgage servicer in Ohio. A registered mortgage servicer must maintain an office location for the transaction of business in Ohio.<sup>26</sup>

The act brings these mortgage servicers under the regulatory umbrella of the Ohio Residential Mortgage Lending Act (RMLA) (R.C. Chapter 1322.) and subjects mortgage servicers to the same registration requirement as mortgage lenders and brokers under the RMLA.

The act defines "**mortgage servicer**" as an entity that, for itself or on behalf of the holder of a mortgage loan, holds the servicing rights, records mortgage payments on its books, or performs other functions to carry out the mortgage holder's obligations or rights under the mortgage agreement. The functions include the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of such funds to the taxing authority and insurance company.<sup>27</sup>

It is a fifth degree felony to act as an unregistered mortgage servicer. This offense is a strict liability offense.<sup>28</sup>

### Exemptions

As part of the RMLA, the act excludes the following from the mortgage servicer registration requirement:

--Any entity chartered under the authority of any federal or state law as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity that is regulated by a federal banking agency and is owned and controlled by a depository institution;

--A consumer reporting agency that is in substantial compliance with the federal Fair Credit Reporting Act;

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<sup>26</sup> R.C. 1322.07(A), with conforming changes in R.C. 1322.01(H), 1322.09, 1322.40, and 1322.50.

<sup>27</sup> R.C. 1322.01(AA).

<sup>28</sup> R.C. 1322.07(A); R.C. 1322.99, not in the act.



--Any political subdivision, or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state;

--A college or university or a controlled entity of a college or university;

--Any entity created solely for securitizing loans secured by an interest in real estate, provided it does not service the loans;

--Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if certain circumstances apply;

--A bona fide 501(c)(3) tax-exempt nonprofit organization whose primary activity is constructing, remodeling, or rehabilitating homes for low-income families, provided that it meets specified conditions;

--A credit union service organization, if it utilizes services provided by registered mortgage loan originators or holds a valid letter of exemption issued by the Superintendent in accordance with the RMLA;

--A depository institution not otherwise required to be licensed under the RMLA that voluntarily makes a filing on the Nationwide Multistate Licensing System & Registry (NMLS&R) as an exempt entity for the purpose of licensing loan originators exclusively associated with it, and holds a valid letter of exemption issued by the Superintendent in accordance with the RMLA.<sup>29</sup>

### **Application; investigation; issuance of certificate of registration**

The act requires that a mortgage servicer registration application be in a form prescribed by the Superintendent that complies with the NMLS&R requirements. It must be accompanied by a nonrefundable \$500 application fee for each location to be maintained by the applicant, and any additional fee required by the NMLS&R. The Superintendent must investigate the applicant and any individual whose identity is required to be disclosed in the application. The investigation must include a civil records check.<sup>30</sup>

The applicant also must furnish to the NMLS&R information concerning the applicant's identity, including:

(1) The applicant's fingerprints for purposes of a state, national, and international criminal history background check;

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<sup>29</sup> R.C. 1322.04, not in the act.

<sup>30</sup> R.C. 1322.09(A) and (B).



(2) Personal history and experience in a form prescribed by the NMLS&R;

(3) Authorization for the Superintendent and the NMLS&R to obtain an independent credit report from a consumer reporting agency and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.<sup>31</sup>

After the investigation, the Superintendent is to issue a certificate of registration to the applicant if the Superintendent finds that all the conditions under the RMLA are met. Similarly, registration may be renewed annually by December 31 if the Superintendent finds that the registrant has met the required conditions.<sup>32</sup>

### **Designated operations manager**

Each mortgage servicer registrant must designate an employee or owner of that registrant's business as the operations manager, who is to be responsible for the management, supervision, and control of a particular location. However, the act explicitly states that the operations manager of an entity registered exclusively as a mortgage servicer does not need to meet the same requirements under the RMLA for operations managers employed by mortgage brokers, lenders, or an entity holding a valid letter of exemption under the RMLA.<sup>33</sup>

### **Examination of records; call reports; electronic records**

The registrant must maintain records pertaining to its business as a mortgage servicer for four years. This requirement also applies to any person who ceases business as a mortgage servicer. As often as the Superintendent considers it necessary, the Superintendent may examine these records. Additionally, registrants must submit call reports or other reports of condition to the NMLS&R.<sup>34</sup>

### **Other provisions of the RMLA**

As part of the RMLA, mortgage servicers are subject to the same obligations, restrictions, and prohibitions as are mortgage brokers and lenders, as well as the surety bond requirement.<sup>35</sup>

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<sup>31</sup> R.C. 1322.09(C).

<sup>32</sup> R.C. 1322.10, not in the act.

<sup>33</sup> R.C.1322.12.

<sup>34</sup> R.C. 1322.34.

<sup>35</sup> R.C. Chapter 1322.



## Consumer Protection Law: debt collecting on junior liens

Under the act, before a person collects or attempts to collect on a debt in default that is secured by a second mortgage lien or junior lien on a residential property, the person must first send a written notice via U.S. mail to the residential address of the debtor.<sup>36</sup>

### Notice

The notice must be printed in at least 12-point type and provide the name and contact information of the person collecting the debt, the amount of the debt, and a statement that (1) the debtor has a right to an attorney, (2) the debtor may qualify for debt relief under the U.S. Bankruptcy Code, Chapter 7 (liquidation bankruptcy) or 13 (reorganization bankruptcy), and (3) a debtor that qualifies under Chapter 13 may be able to protect their residential real property from foreclosure.<sup>37</sup>

### Debt history

Upon written request of the debtor, the owner of the debt must provide a copy of the note and the loan history to the debtor.<sup>38</sup>

### Bona fide errors

Any owner of debt that is subject to the requirements stated above has a qualified immunity from civil liability if:

(1) The owner shows by a preponderance of the evidence that the compliance failure was not intentional and resulted from a "**bona fide error**" (an unintentional clerical, calculation, computation malfunction or programming, or printing error) notwithstanding the maintenance of procedures reasonably adapted to avoid any such error;

(2) Within 60 days after discovering the error, and prior to the initiation of any action, the owner of the debt notifies the debtor of the error and the manner in which the owner of the debt intends to make full restitution to the debtor; **and**

(3) The owner of the debt promptly makes reasonable restitution to the debtor.

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<sup>36</sup> R.C. 1349.72(A).

<sup>37</sup> R.C. 1349.72(B).

<sup>38</sup> R.C. 1349.72(C).



If the owner of the debt does not comply with these steps, a debtor injured by the error may sue to recover damages. The lawsuit cannot, however, be maintained as a class action.<sup>39</sup>

## Other provisions

### Receivership: notice of claims procedure

In the event of the involuntary liquidation of a bank and the appointment of a receiver, the receiver is required under ongoing law to publish notice of its claims procedure once a month for two consecutive months in a local newspaper of general circulation. The act specifies that it is to be published "in print or in a comparable electronic format."<sup>40</sup>

### General Loan Law

The act names sections 1321.51 to 1321.60 of the Revised Code, as amended or enacted by H.B. 199 of the 132nd General Assembly, the "General Loan Law."<sup>41</sup>

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## HISTORY

ACTION	DATE
Introduced	01-30-18
Reported, H. Gov't Accountability & Oversight	03-15-18
Passed House (89-6)	04-11-18
Reported, S. Insurance & Financial Institutions	11-28-18
Passed Senate (30-0)	11-28-18
House concurred in Senate amendments (90-0)	12-05-18

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<sup>39</sup> R.C. 1349.72(D). This qualified immunity is substantially similar to the qualified immunity described above under "**Financial institutions – general regulation – Bona fide errors.**"

<sup>40</sup> R.C. 1125.23.

<sup>41</sup> Section 3.

