OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Jennifer A. Parker, Carla Napolitano, and Joe McDaniels

Sub. H.B. 489

132nd General Assembly
(As Reported by H. Government Accountability and Oversight)

Rep. Dever

BILL SUMMARY

Financial institutions – regulation and taxation

- 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;

--What constitutes the "membership share" required for membership in a credit union;

--The purchase of real estate by a credit union;

--The misleading use of a credit union's name; and

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

- Limits the tax base upon which the financial institutions tax (FIT) is computed for financial institutions that report total equity capital in excess of 14% of total assets.

Data analytics

- Provides for data analytics to 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 loan agreements and allowable interest rates and fees.

- Prohibits a person 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 registered mortgage servicers to comply with the application requirements, restrictions, record retention requirements, and surety bond requirements under the RMLA.

- Permits the Superintendent to enforce the RMLA against registered mortgage servicers and subjects mortgage servicers to the same penalties as mortgage brokers and mortgage lenders.

- 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 a debt described above if the person makes a "bona fide error" and takes certain steps after the error is made.

Other provision

- Enacts provisions relative to the publishing of notice of a receiver's claim procedure in the event of an involuntary liquidation of a bank and the naming of certain laws.

TABLE OF CONTENTS

CONTENT AND OPERATION

Financial institutions – regulation and taxation

Examinations

The bill provides an exception to the current requirement that state banks and Ohio-chartered credit unions be examined **at least** once every 24-month cycle by the Superintendent of Financial Institutions.[1] Under the bill, 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.[2] (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 — **C**apital Adequacy, **A**sset Quality, **M**anagement, **E**arnings, **L**iquidity, and **S**ensitivity to Market Risk — often referred to as the "**CAMELS**" rating. Ratings are assigned based on a 1 to 5

[1] R.C. 1121.10(A) and 1733.32(A)(3).

[2] R.C. 1121.101(A) and 1733.328(A).

numerical scale, with a 1 indicating the highest rating.)[3] An institution's CAMELS rating used for purposes of the bill is not a public record.[4]

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

Bona fide errors

Under the bill, 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 taken. For this purpose, "**bona fide error**" means an unintentional clerical, calculation, computer malfunction or programming, or printing error. More specifically, the bill protects a state bank or a credit union from civil liability in any action brought under the Banking Law (R.C. Title XI) or Credit Union Law (R.C. Chapter 1733.), respectively, or under the Secured Transactions Law (R.C. Chapter 1309.), the Retail Installment Sales Act (R.C. Chapter 1317.), or the Consumer Sales Practices Act (R.C. Chapter 1345.), 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.

---

[3] See Federal Deposit Insurance Corporation, *Uniform Financial Institutions Rating System*, https://www.fdic.gov/regulations/laws/rules/5000-900.html, (accessed February 2, 2018).

[4] R.C. 1121.101(C) and 1733.328(C).

[5] R.C. 1121.101(B) and 1733.328(B).

If the above conditions are not met, a consumer injured by the error has a cause of action to recover damages. The action cannot, however, be maintained as a class action.[6]

Application of rules

Existing law authorizes the Superintendent to adopt rules necessary for the administration of the Division of Financial Institutions. The bill 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 effective date of the rule.[7]

Credit unions

Membership share

Under current law, the subscription to or purchase of a "membership share" of a credit union is a prerequisite for membership in the credit union. The bill 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 from time to time 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.[8]

Purchase of real estate

In order to purchase real estate needed for a credit union's present or future operation, a credit union is currently required to notify the Superintendent in writing and obtain the Superintendent's prior approval. The Superintendent has 30 days after receipt of the notification to deny, approve, or modify the purchase. The bill retains the

[6] 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.

[7] R.C. 1181.08.

[8] R.C. 1733.01(K) and 1733.05(B).

notification requirement but removes the necessity of obtaining approval of the purchase.[9]

Misleading use of credit union name

The bill 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 of up to $10,000 for each day the violation is committed or continued. In addition, the credit union may bring an action in law or equity for recovery of damages, a temporary restraining order, an injunction, or any other available remedy.[10]

Banking law: limitation on certain charges

Current law generally authorizes a bank to charge interest at a rate not exceeding an annual percentage rate of 25%, as well as any other fees and charges the bank and the borrower agree to. With respect to residential mortgage loans, however, the law imposes a limit on the amount of discount points and prepayment or refinancing penalties that a bank can collect. The bill removes that limitation.[11]

Financial institutions tax (FIT)

Continuing law levies the FIT on the basis of a financial institution's total equity capital in proportion to the institution's gross receipts attributed to doing business in Ohio ("total Ohio equity capital"). Total Ohio equity capital is taxed under a three-tier rate structure: a rate of 0.8% applies to the first $200 million of a taxpayer's total Ohio equity capital, a rate of 0.4% applies to total equity capital greater than $200 million and less than $1.3 billion, and a rate of 0.25% applies to total Ohio equity capital greater than or equal to $1.3 billion. If, based on these rates, a taxpayer's liability does not exceed $1,000, the taxpayer must instead pay a minimum tax of $1,000.[12]

For tax years beginning in 2019 or thereafter, the bill limits the tax base upon which the FIT is computed for any financial institution having total equity capital in

[9] R.C. 1733.04(B)(4).

[10] R.C. 1733.441.

[11] R.C. 1109.20; R.C. 1343.011, not in the bill.

[12] R.C. 5726.04(A).

excess of 14% of its total assets.[13] Total equity capital in excess of 14% of an institution's total assets would not be included in the FIT base. In other words, if total equity capital exceeds 14% of total assets, only the amount of equity capital equal to 14% of assets would be apportioned to Ohio on the basis of the institution's gross receipts and multiplied by the applicable tiered tax rates.

An institution's total assets would be derived from information that must be filed with federal regulatory authorities (i.e., FR Y-9 or call reports), as is an institution's total equity capital.

Data analytics

As defined by the bill, "**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. The bill provides for data analytics to be utilized on data regarding financial institutions and consumer finance companies in order to gain "impartial, accurate information" to assist the General Assembly in proposing and evaluating legislation. At any time, the Speaker of the House of Representatives or the President of the Senate 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 R.C. Chapter 1321. or 1322. The bill permits the Director to retain economists, financial analysts, and any other necessary professionals on a consulting basis for this purpose.[14]

Consumer-related provisions

Banking Law: private right of action

Existing law specifies that the provisions of the Banking Law (Title XI) do *not* create a private right of action for any party other than the Superintendent *unless* expressly provided otherwise. The bill allows for a private right of action with respect to the current provisions governing revolving loan agreements and those setting forth allowable interest rates and fees.[15]

---

[13] R.C. 5726.04(C); Section 5.

[14] R.C. 103.31.

[15] R.C. 1101.05; R.C. 1109.18 and 1109.20, not in the bill.

Residential Mortgage Lending Act: mortgage servicer registration

The bill obligates a nonexempt mortgage loan servicer to register with the Superintendent of Financial Institutions (see, "**Exemptions**," below). More specifically, the bill prohibits a person from acting as a mortgage servicer without first obtaining a certificate of registration from the Superintendent of Financial Institutions 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 or business as a mortgage servicer in Ohio.[16]

The bill brings these mortgage servicers under the regulatory umbrella of the Ohio Residential Mortgage Lending Act (RMLA) (R.C. Chapter 1322.), effective March 23, 2018, and subjects mortgage servicers to the same registration requirement as mortgage lenders and brokers under the RMLA. Under law in effect through March 22, 2018, a person engaged in the business of collecting the person's own or another person's money, credit, or choses in action for nonfirst lien residential mortgage loans is required to register with the Division of Financial Institutions.[17] Sub. H.B. 199 of the 132nd General Assembly, effective March 23, 2018, eliminates this requirement.[18]

The bill 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*.[19]

A violation of the prohibition against acting as a mortgage servicer without having obtained a certificate of registration for the principal office and every branch office is a fifth degree felony. This offense is a strict liability offense.[20]

---

[16] R.C. 1322.07(A), with conforming changes in R.C. 1322.01(H), 1322.09, 1322.12, 1322.34, 1322.40, and 1322.50.

[17] R.C. 1321.52(A)(1)(b) (effective through March 22, 2018).

[18] R.C. 1321.52(A)(1) in Sub. H.B. 199 of the 132nd General Assembly.

[19] R.C. 1322.01(AA).

[20] R.C. 1322.07(A); R.C. 1322.99, not in the bill.

Exemptions

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

--Any entity chartered and lawfully doing business under the authority of any law of Ohio, another state, or the United States 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;

--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 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. For this purpose, "**securitizing**" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.

--Any person engaged in the retail sale of manufactured homes, mobile homes, or industrialized units if, in connection with obtaining financing by others for those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not: (1) offer or negotiate the residential mortgage loan rates or terms, (2) provide any counseling with borrowers about residential mortgage loan rates or terms, (3) receive any payment or fee from any company or individual for assisting the borrower to obtain or apply for financing to purchase the home or unit, or (4) assist the borrower in completing the residential mortgage loan application.

--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 (1) it makes no-profit mortgage loans or mortgage loans at 0% interest to low-income families and no fees accrue directly to it from those loans and (2) the U.S. Department of Housing and Urban Development does not deny this 501(c)(3) exemption;

--A credit union service organization, if it utilizes services provided by registered mortgage loan originators or it holds a valid letter of exemption issued by the Superintendent of Financial Institutions 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 it holds a valid letter of exemption issued by the Superintendent in accordance with the RMLA.[21]

Application; investigation; issuance of certificate of registration

The bill requires that an application for registration as a mortgage servicer be in a form prescribed by the Superintendent and 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.[22]

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

(1) The applicant's fingerprints for submission to the FBI, and any other governmental agency authorized to receive such information, for purposes of a state, national, and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the NMLS&R, along with 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.

The Superintendent is authorized to establish relationships or contract with the NMLS&R, or any entities designated by it, to collect and maintain records and process fees related to certificates of registration or the persons associated with a mortgage servicer.[23]

After the required investigation, the Superintendent must 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

[21] R.C. 1322.04 (effective March 23, 2018), not in the bill.

[22] R.C. 1322.09(A) and (B).

[23] R.C. 1322.09.

Superintendent finds that the registrant has complied with the requirements under the RMLA.[24]

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 bill 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.[25]

Examination of records; call reports; electronic records

As often as the Superintendent of Financial Institutions considers it necessary, the Superintendent may examine the registrant's records. These records must be retained for four years. This requirement also applies to any person whose certificate of registration is cancelled, surrendered, or revoked or who otherwise ceases business as a mortgage servicer. Additionally, registrants must submit call reports or other reports of condition to the NMLS&R.[26]

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 under the RMLA and authorizes the Superintendent to enforce these requirements. In addition, under the RMLA mortgage servicers will be subject to the surety bond requirement.[27]

Consumer Protection Law: debt collecting on junior liens

The bill requires that, before a person collects or attempts to collect on a debt that is secured by a second mortgage lien or junior lien on a residential property and the

[24] R.C. 1322.10 (effective March 23, 2018), not in the bill.

[25] R.C.1322.12.

[26] R.C. 1322.34.

[27] R.C. 1322.40 and 1322.50; R.C. 1322.09, 1322.15, 1322.16, 1322.32, 1322.36, 1322.37, 1322.52, and 1322.99, not in the bill.

debt is in default, the person must first send a written notice via U.S. mail to the residential address of the debtor.[28]

Notice

The notice must be printed in at least 12-point type and state (1) the name and contact information of the person collecting the debt, (2) the amount of the debt, (3) a statement that the debtor has a right to an attorney, (4) a statement that the debtor may qualify for debt relief under the U.S. Bankruptcy Code, Chapter 7 (liquidation bankruptcy) or 13 (reorganization bankruptcy), and (5) a statement that a debtor that qualifies under Chapter 13 may be able to protect their residential real property from foreclosure.[29]

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.[30]

Bona fide error – immunity from civil liability

Any owner of debt that is subject to the requirements stated above has a qualified immunity from civil liability if the owner shows by a preponderance of the evidence all of the following:

(1) 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.[31]

---

[28] R.C. 1349.72(A).

[29] R.C. 1349.72(B).

[30] R.C. 1349.72(C).

[31] R.C. 1349.72(D)(1) and (2).

Private cause of action

If the debt owner does not comply with the steps described above regarding a bona fide error, a debtor injured by the error has a cause of action to recover damages. However, a class action is prohibited.[32]

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 by current law to publish notice of its claims procedure once a month for two consecutive months in a newspaper of general circulation. The bill specifies that it is to be published "in print or in a comparable electronic format."[33]

Naming of laws

The bill specifies that this is to be known as the "Ohio Financial Institutions Reform Act" and sections 1321.51 to 1321.60 of the Revised Code, as amended or enacted by Sub. H.B. 199 of the 132nd General Assembly, is to be known as the "General Loan Law."[34]

HISTORY

ACTION	DATE
Introduced	01-30-18
Reported, H. Government Accountability and Oversight	03-15-18

H0489-RH-132.docx/ec

[32] R.C. 1349.72(D)(3).

[33] R.C. 1125.23.

[34] Sections 3 and 4.