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Bill Analysis
Legislative Service Commission

S.B. 231
123rd General Assembly
(As Introduced)

Sens. White, Ray

BILL SUMMARY

- Makes revisions in the Mortgage Loan Law with respect to its application; registration renewals and annual fees; computation of time on loans; interest, points, and other permissible charges; the definition of "principal amount"; examinations and investigations of registrants; and penalties for violations.
- Makes revisions in the Small Loan Law with respect to annual license fees and penalties for violations.

CONTENT AND OPERATION

Mortgage Loan Law

Application of the law; violations

(sec. 1321.52(A)(1) and (D)(1))

The Mortgage Loan Law (sections 1321.51 to 1321.60 of the Revised Code) prohibits any person from engaging in the following activities, without first obtaining a certificate of registration from the Division of Financial Institutions of the Department of Commerce:

(1) Advertising or holding out that the person is engaged in the business of making loans secured by a mortgage on a borrower's real estate which is other than a first lien on the real estate;

(2) Engaging in the business of lending or collecting the person's own or another person's money, credit, or choses in action for such loans.

The bill expands the application of the law by also requiring registration by any person that advertises or holds out to be engaged in the business of making

secured or unsecured loans for which a rate of interest in excess of the maximum allowed under the usury statute (8% per year) is charged, *unless* the person is specifically authorized by state or federal law to charge that rate.

A violation of the law's prohibition against lending without a certificate of registration is currently a felony of the fifth degree (sec. 1321.99(E)). The bill provides an additional penalty. It specifies that any lender subject to the law that makes a loan without first obtaining a certificate of registration has no right to collect, receive, or retain any interest or charges on that loan.

Registration renewals; annual registration fee

(secs. 1321.20(A), 1321.52(D)(2), and 1321.53(A)(4))

Under existing law, a certificate of registration "may be continued from year to year" by payment of an annual fee on or before the last day of June each year. The bill, however, states that the certificate will *expire* on July 1 next after its issue, and on July 1 in each succeeding year, *unless* renewed on or before the last day of June. Additionally, if a registrant applies for renewal after that date, but before August 1, and the Division approves the application, the registrant is *not* in violation of the law with respect to any loan made while the registrant's certificate was expired.

Current law authorizes the Superintendent of Financial Institutions to determine the amount of the annual registration fee, in accordance with specified standards. The fee cannot, however, exceed \$250. The bill increases the maximum fee to \$300.

Computation of time on loans

(sec. 1321.57(B))

For purposes of computation of time on loans, including the calculation of interest, the law specifies that a month is to be considered one-twelfth of a year and a day is to be considered one three hundred sixty-fifth of a year. The bill provides an alternative method of computation. It authorizes a registrant to consider a day as one three hundred sixtieth of a year and each month as having 30 days.

Interest, points, and other permissible charges

Interest (sec. 1321.57(C) and (E)). With respect to interest bearing loans, the law specifies that the interest is to be computed on unpaid principal balances outstanding from time to time, for the time outstanding. It also provides an



alternative method of computing interest, based on the elapsed time between scheduled payment due dates, "if the loan contract so provides." The bill removes that phrase.

The law states that interest cannot be compounded or paid in advance. Under the bill, interest also cannot be collected in advance. However, it may be charged to extend the first monthly installment period by not more than 15 days, and the interest charged the extension may be added to the principal amount of the loan.

Under existing law, a registrant, at the request of a borrower, may obtain, on one or more borrowers, credit life insurance, credit accident and health insurance, and unemployment insurance. If the registrant obtains the insurance, the bill prohibits the registrant from charging or collecting interest on any insured amount that remains unpaid after the borrower's date of death.

Points; closing costs (sec. 1321.57(G)(1) and (H)(1)(b)). With respect to loans secured by an interest in real estate, the law prohibits a registrant from charging points on a refinancing "within one year from the date of a prior loan on which points were charged." Under the bill, a registrant is prohibited from charging points "on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan," if the refinancing occurs within one year after the date of the refinanced loan on which points were charged.

Current law authorizes registrants to charge the following closing costs: fees or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes. The bill removes the phrase "or similar purposes" and, instead, specifically authorizes the charging of title endorsement fees, title binders, title commitment fees, settlement or closing fees, courier fees, and any federally mandated flood plain certification fee. The bill also authorizes the charging of fees for any federally mandated inspection of home improvement work financed by a second mortgage loan.

Loan origination charges (sec. 1321.57(J)). The bill makes the following changes with respect to the loan origination charges permitted on *secured* loans:

PRINCIPAL AMOUNT OF THE LOAN	MAXIMUM LOAN ORIGINATION CHARGE	
	<i>Current law</i>	<i>The bill</i>
Less than \$500	\$15	same
\$500 but less than \$1,000	\$30	same
\$1,000 but less than \$2,000	\$65	\$100
At least \$2,000	\$150 or 1% of the principal amount of the loan, whichever is greater	
\$2,000 but less than \$5,000		\$200
At least \$5,000		\$250 or 1% of the principal amount of the loan, whichever is greater

The bill also makes the following changes with respect to loan origination charges permitted on *unsecured* loans:

PRINCIPAL AMOUNT OF THE LOAN	MAXIMUM LOAN ORIGINATION CHARGE	
	<i>Current law</i>	<i>The bill</i>
Less than \$500	\$15	same
\$500 but less than \$1,000	\$30	same
\$1,000 but less than \$2,000	\$65	
\$2,000 but less than \$5,000	\$100	
\$1,000 but less than \$5,000		\$100
At least \$5,000	\$150 or 1% of the principal amount of the loan, whichever is greater	\$250

Existing law prohibits a registrant from imposing loan origination charges on a borrower more frequently than once in any 90-day period. The bill instead provides that if a refinancing occurs within 90 days after the date of the refinanced loan, a registrant cannot impose loan origination charges "on the portion of the principal amount that is applied to the unpaid principal amount of the refinanced loan."

Credit line charges (sec. 1321.58(C)). The law permits a registrant to charge and receive, on open-end loans, an annual credit line charge in the following amounts:

(1) For the first year--1% of the original credit line or \$150, whichever is greater;

(2) For subsequent years--one-half per cent of the credit line on the anniversary date or \$50, whichever is greater.

The bill modifies what can be charged for the first year ((1), above). Under the bill, if the original credit line is less than \$5,000, the maximum charge is \$150. If the original credit line is \$5,000 or more, the maximum charge is 1% of the original credit line or \$250, whichever is greater.

Other permissible charges (sec. 1321.57(H)(1)). The law prohibits a registrant from charging any fees other than (1) those specifically authorized by law, and (2) any costs or disbursements "to which the registrant may become entitled by law" in connection with any suit to collect a loan or any lawful activity to realize on a security interest or mortgage after default. The bill removes the phrase "to which the registrant may become entitled by law," and instead specifies that the costs and disbursements that may be received by a registrant in connection with a suit to collect a loan or realize on a security interest or mortgage include reasonable attorney fees incurred by the registrant as a result of the suit or activity.

Definition of "principal amount"

(sec. 1321.51(D))

Existing law defines "principal amount" for purposes of the Mortgage Loan Law as the amount of cash paid to, or paid or payable for the account of, the borrower. The bill specifies that the term includes "any charge, fee, or expense that is financed by the borrower at origination of the loan or during the term of the loan."

Examinations and investigations of registrants

(secs. 1321.53(A)(5) and 1321.55(A))

Current law requires the Division to conduct annual examinations of the records of each registrant to verify compliance with the law. The bill extends that examination cycle to at least once each 18 months.

The bill also permits the Division to investigate a registrant, upon a change of 10% or more in its ownership, to determine whether any fact or condition exists that, if it had existed at the time of the original application for a certificate of registration, the fact or condition would have warranted the Division to deny the application. If the Division finds such a fact or condition, it may revoke the registrant's certificate.

Administrative penalties

(sec. 1321.54(B))

If a registrant continues to violate the Mortgage Loan Law after receiving notice of the violation from the Division, the Division is required under the law to revoke or suspend the registrant's certificate in accordance with the Administrative Procedure Act. The bill grants the Division additional authority under such circumstances: it may choose to impose a monetary fine or to fail to renew the registrant's certificate. Any monetary fine imposed cannot exceed \$1,000 per violation of law or rule, for each day the violation is committed, repeated, or continued.

Small Loan Law

Annual license fee

(sec. 1321.20(A))

The Small Loan Law generally prohibits any person from engaging in the business of lending money, credit, or chosing in action in amounts of \$5,000 or less, without first obtaining a license from the Division of Financial Institutions of the Department of Commerce. As under the Mortgage Loan Law, the Superintendent of Financial Institutions is required to determine the amount of the annual license fee, in accordance with specified standards. That fee cannot, however, exceed \$250. The bill increases the maximum fee to \$300.

Violations

(sec. 1321.99(A))



Under current law, anyone who violates the law's prohibition against making small loans without a license is subject to a fine of at least \$100 but not more than \$500 for a first offense. For each subsequent offense, the person must be fined at least \$200 but not more than \$1,000, or imprisoned not more than 6 months, or both. Under the bill, a violation is designated a felony of the fifth degree.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-04-00	p. 1282

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