Final Analysis

Jennifer A. Parker Legislative Service Commission

Sub. H.B. 386

124th General Assembly
(As Passed by the General Assembly)

Reps. **Blasdel, Salerno, Carmichael, DeWine, Raga, Hoops, Metelsky, Schaffer, G. Smith, Webster, Collier, Reidelbach, Seitz, Ogg, Olman, Schmidt, Roman, Hagan, Schneider, Jolivette, Faber, Lendrum, Calvert, Setzer, Reinhard, Sulzer, Flowers, Hughes, Evans, Niehaus, Widowfield, Williams, Trakas**

Sens. **Jacobson, Harris, Blessing, Carnes, Jordan, Mumper, Nein, Wachtmann, White**

Effective date: May 24, 2002; certain provisions effective February 22, 2002

ACT SUMMARY

- Conforms Ohio law with the federal Home Ownership and Equity Protection Act of 1994 (HOEPA) with respect to specified consumer loans.

- Provides additional prohibitions relative to single premium credit life and credit disability insurance and low-rate loans.

- Creates the Office of Consumer Affairs within the Division of Financial Institutions.

- States the intent of the General Assembly on the relationship of state and local laws regarding the regulation of loans and other forms of credit by doing the following:

  --Specifying that the state solely is to regulate activities related to the lending and credit business in the state in lieu of all regulation of lending or credit activities by a political subdivision, including a municipal corporation; and

  --Providing that state law provides a uniform, comprehensive regulatory framework and preempts any regulation of lending and credit activities by a political subdivision, including a municipal corporation.

- Establishes the Predatory Lending Study Committee to report to the General Assembly about predatory lending practices in mortgage lending or origination.

- Makes an appropriation for the enforcement of the act, and for the operation of the Office of Consumer Affairs, and provides that only this appropriation provision takes immediate effect.

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CONTENT AND OPERATION

<u>Conforming Ohio law with the federal Home Ownership and Equity Protection Act of 1994</u>

<u>Overview</u>

The act enacts sections 1349.25 to 1349.36 of the Revised Code to provide disclosure requirements, and to prohibit creditors from engaging in certain practices, with respect to "covered loans." The stated purpose of these provisions is "to bring Ohio law into conformance with" the Home Ownership and Equity Protection Act of 1994 (HOEPA), 15 U.S.C.A. 1601 note, and the regulations and interpretations adopted under the Act by the Federal Reserve Board (FRB), "in order to facilitate the uniform administration and enforcement of state and federal laws on the regulation of certain high cost mortgages" (sec. 1349.32).

<u>Definitions</u>

(sec. 1349.25(B) to (G))

The act applies to "**covered loans**," which are defined as consumer credit mortgage loan transactions that (1) involve property located within Ohio and (2) are considered a mortgage under HOEPA (15 U.S.C.A. 1602aa) and the FRB regulations.

Generally, to be considered a mortgage under HOEPA, the transaction must be secured by the consumer's principal dwelling (other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan), and must meet *either* of the following conditions:

(1) The annual percentage rate at consummation of the transaction will exceed by more than ten percentage points the yield on United States Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor (see **COMMENT** 1);

(2) The total points and fees payable by the consumer at or before closing will exceed 8% of the total loan amount or $400, whichever is greater. The $400 figure is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1. (The adjusted dollar amount for 2002 is $480.)

"**Consumer**" is defined as a natural person to whom credit is offered or extended primarily for personal, family, or household purposes.

"**Consummation**" means the time that a consumer becomes contractually obligated on a credit transaction.

"**Credit**" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

"**Creditor**" has the same meaning as in HOEPA (15 U.S.C.A. 1602(f)) and the FRB regulations. Consequently, the term generally refers to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit that is payable by written agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Any person who, in any 12-month period, originates more than one covered loan or one or more covered loans through a mortgage broker is considered a to "regularly extend" consumer credit for purposes of the act.

"**Person**" is defined as a natural person, partnership, association, trust, corporation, or any other legal entity.

Required disclosures

(sec. 1349.26)

Under the act, a creditor must provide, for each covered loan, both of the following disclosures. The disclosures must be in conspicuous type size and be in substantially the following form:

(1) "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application."

(2) "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

In addition, a creditor is required to disclose, for each covered loan, either of the following:

(1) In the case of a credit transaction with a fixed rate of interest, the annual percentage rate, the amount of the regular monthly payment, and the amount of any balloon payment;

(2) In the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest

rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to federal law governing adjustable rate mortgage caps (12 U.S.C.A. 3806).

With respect to any mortgage that is refinanced on or after October 1, 2002, the creditor is also required to disclose the total amount the consumer will borrow, as reflected by the face amount of the note. If the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact must be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed is to be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

The disclosures required under the act must be provided not less than three business days prior to consummation of the transaction. After providing those disclosures, a creditor cannot change the terms of the extension of credit if the changes make the disclosures inaccurate, unless new disclosures are provided in accordance with the act. A creditor may provide the new disclosures by telephone, if both of the following requirements are met:

(a) The change is initiated by the consumer.

(b) At the consummation of the loan transaction, the creditor provides to the consumer the new disclosures in writing and the creditor and consumer certify in writing that, not later than three days prior to the date of consummation of the transaction, the new disclosures were provided by telephone.

After receiving the disclosures required by the act, the consumer may modify or waive the three-day waiting period between delivery of those disclosures and consummation of the loan transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all of the consumers entitled to the waiting period.

The act states that compliance with certain disclosure requirements of the federal Truth-in-Lending Law (12 C.F.R. 226.31(c)(1) and 226.32(c), as amended) is deemed compliance with the disclosure requirements of the act.

Prohibited practices

(secs. 1322.062(A)(2), 1349.25(A), and 1349.27(A) to (H))

The act prohibits a creditor from doing any of the following:

(1) Making a covered loan that includes any of the following:

(a) Terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due. For purposes of this provision, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method. ("**Actuarial method**" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.)

The act does not prohibit a prepayment penalty imposed in accordance with HOEPA (15 U.S.C.A. 1639(c)(2)) and the FRB regulations. (Under HOEPA, a covered loan may contain a prepayment penalty *if* (1) at the time the loan is consummated, the consumer is not liable for an amount of monthly indebtedness payments (including the amount of credit to be extended under the transaction) that is greater than 50% of the monthly gross income of the consumer and the income and expenses of the consumer are verified by a financial statement signed by the consumer, by a credit report, and in the case of employment income, by payment records or by verification from the employer of the consumer, (2) the penalty applies only to a prepayment made with amounts obtained by the consumer by means other than a refinancing by the creditor under the loan or an affiliate of that creditor, (3) the penalty does not apply after the end of the five-year period beginning on the date on which the loan is consummated, *and* (4) the penalty is not prohibited under other applicable law.)

(b) Terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due;

(c) Terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer;

(d) Terms under which a rebate of interest arising from a loan acceleration due to default is calculated by a method less favorable than the actuarial method.

(2) Making a covered loan that provides for an interest rate applicable after default that is higher than the interest rate that applies before default;

(3) Making a covered loan having a term of less than five years that includes terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance. This provision does

not apply to any covered loan with a maturity of less than one year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(4) Engaging in a pattern or practice of extending credit to consumers under covered loans based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment;

(5) Making a payment to a contractor under a home improvement contract from amounts extended as credit under a covered loan, except by an instrument that is payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, by a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

(6) On or after October 1, 2002, making a covered loan that includes a demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except when (a) there is fraud or material misrepresentation by the consumer in connection with the loan, (b) the consumer fails to meet the repayment terms of the agreement for any outstanding balance, or (c) there is any action or inaction by the consumer that adversely affects the creditor's security for the loan or any right of the creditor in that security.

(7) Within one year after having made a covered loan, refinancing a covered loan to the same borrower into another covered loan, unless the refinancing is in the consumer's interest. An assignee holding or servicing a covered loan cannot, for the remainder of the one-year period following the date of origination of the covered loan, refinance any covered loan to the same consumer into another covered loan, unless the refinancing is in the consumer's interest.

A creditor or assignee is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, whether or not the existing loan is satisfied and replaced by the new loan, and charging a fee. The provision applies on and after October 1, 2002.

(8) Making a covered loan without first obtaining a copy of the mortgage loan origination disclosure statement that was delivered to the buyer in accordance with the Mortgage Brokers Law. (Relatedly, the act requires a mortgage broker to deliver a copy of the mortgage loan origination disclosure statement to the lender *if* the loan is a covered loan.)

<u>Additional prohibitions: single premium credit insurance and low-rate loans</u>

(sec. 1349.27(I) and (J))

The act prohibits certain practices with respect to covered loans that are *not* prohibited by HOEPA. Under the act, a creditor is also prohibited from doing either of the following:

(1) Financing, directly or indirectly, into a covered loan or financing to the same borrower within 30 days of a covered loan any credit life or credit disability insurance premiums sold in connection with the covered loan, provided that any credit life or credit disability insurance premiums calculated and paid on a monthly or other periodic basis are not to be considered financed by the person originating the loan. For purposes of this provision, credit life or credit disability insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

(2) Replacing or consolidating a zero interest rate or other low-rate loan made by a governmental or nonprofit lender with a covered loan within the first ten years of the low-rate loan unless the current holder of the loan consents in writing to the refinancing. For purposes of this provision, a "low-rate loan" means a loan that carries a current interest rate two percentage points or more below the current yield on United States Treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as applicable, must be used, in lieu of the current rate, to determine whether a loan is a low-rate loan.

<u>Right of rescission</u>

(sec. 1349.29)

If a covered loan transaction includes any term prohibited by the act, the consumer has the right to rescind the transaction in accordance with HOEPA (15 U.S.C.A. 1639(j)) and the FRB regulations.

<u>Right to cure; defense; bona fide error</u>

(sec. 1349.30)

A person is not criminally liable under the act, and cannot be subject to any sanction by the Superintendent of Financial Institutions, for any failure to comply with the act, *if* within 60 days after discovering the error, whether pursuant to the person's own procedures or an examination or investigation by the Superintendent, *and* prior to the initiation of any administrative action by the Superintendent or the receipt of written notice of the error from the consumer, the person notifies the consumer or other person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the consumer will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

The act provides also that a creditor or assignee cannot be held liable in any rescission action, if the creditor or assignee shows by a preponderance of evidence that the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. For purposes of this provision, "bona fide error" includes, but is not limited to, clerical, calculation, computer malfunction and programming, and printing errors. "Bona fide error" does not include an error of legal judgment with respect to a person's obligations under the act.

Criminal penalty

(sec. 1349.31)

The act prohibits a creditor from "willfully and knowingly" failing to comply with section 1349.26 or 1349.27 (relative to disclosure and prohibited practices). It states that, for purposes of the act, "willfully and knowingly" has the same meaning as in 15 U.S.C.A. 1611--the statute setting forth the criminal penalty for a failure to comply with HOEPA.

A violation of this prohibition is a felony of the fifth degree. The Superintendent of Financial Institutions may initiate criminal proceedings by presenting any evidence of criminal violations to the prosecuting attorney of the county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the Superintendent must present the evidence to the Attorney General. The Attorney General is authorized to proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries. These powers are in addition to any other applicable powers of the Attorney General.

Federal regulations; rulemaking by the Superintendent

(secs. 111.15(D)(2), 119.01(A)(1), 121.24(A)(8)(a), 1349.32, and 1349.33)

The regulations and interpretations that are adopted by the Federal Reserve Board to implement HOEPA, and that are effective as of the effective date of the act, are deemed applicable to the act. Such regulations and interpretations specifically include the amendment of sections 226.32 and 226.34 of Title 12 of the Code of Federal Regulations, which amendment was approved by the Federal Reserve Board on December 12, 2001, and takes effect October 1, 2002.

If HOEPA, or any regulation adopted by the Federal Reserve Board under HOEPA, is amended or otherwise modified *after* the effective date of the act, the Superintendent of Financial Institutions is authorized to adopt similar provisions by rule. However, if an amendment or other modification to HOEPA requires the adoption of implementing regulations by the Federal Reserve Board, the Superintendent cannot adopt a rule under this authority until those regulations are adopted.

The Superintendent must adopt these rules in accordance with section 111.15 of the Revised Code. The act expressly provides that the Administrative Procedure Act does *not* apply to rules adopted under this authority.

A rule adopted by the Superintendent under this authority is effective on the later of the following dates:

(1) The date the Superintendent issues the rule;

(2) The date the regulation, rule, interpretation, procedure, or guideline the Superintendent's rule is based on becomes effective.

The Superintendent may, upon 30 days' written notice, revoke any rule adopted under this authority. A rule adopted and not revoked by the Superintendent lapses and has no further force and effect 30 months after its effective date.

Administrative enforcement

Examinations and investigations (sec. 1349.34(A) and (B)). The act permits the Superintendent of Financial Institutions, as often as the Superintendent considers it necessary, to examine a person's records regarding covered loans. The Superintendent may recover from the person any costs incurred in connection with and reasonably related to the examination.

The Superintendent may investigate alleged failures to comply with the act, or any rule adopted thereunder, or complaints concerning a compliance failure. In conducting an investigation, the Superintendent may compel, by subpoena, witnesses to testify in relation to any matter over which the Superintendent has jurisdiction and may require the production of any book, record, or other document pertaining to that matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by a subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county in Ohio, upon application made to it by the Superintendent, must compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein.

Remedies (sec. 1349.34(C) to (F)). If it appears to the Superintendent of Financial Institutions that a person has engaged in, is engaging in, or is about to engage in, any activity constituting a failure to comply with the act, the Superintendent may make application to the court of common pleas of any county in Ohio for an order enjoining that activity. Upon a showing by the Superintendent that a person has engaged in, is engaging in, or is about to engage in, such activity, the court must grant an injunction, restraining order, or other appropriate relief.

In addition, if it appears to the Superintendent that a person has engaged in, is engaging in, or is about to engage in, any activity that may constitute a failure to comply with the act, the Superintendent may, after notice and a hearing conducted in accordance with the Administrative Procedure Act, issue a cease and desist order. The order is enforceable in any court of common pleas in Ohio.

If a person that fails to comply with the act is licensed, registered, or chartered by, or otherwise operates under the authority of, the Superintendent, the Superintendent may, in accordance with the Administrative Procedure Act, suspend, revoke, or deny the renewal of that license, registration, charter, or other authority.

The act authorizes the Superintendent to impose, in accordance with the Administrative Procedure Act, a fine of not more than $2,500 per compliance failure. If the person fails to comply with the act two or more times, the Superintendent may impose a fine of not more than $5,000 per compliance failure. If the person injured by the failure to comply is 65 or older, the Superintendent may double the amount of the fine.

In determining the amount of a fine to be imposed under the act, the Superintendent is required to consider all of the following:

(1) The seriousness of the conduct;

(2) The person's good faith efforts to prevent the conduct;

(3) The person's history regarding violations and compliance with the Superintendent's orders;

(4) The person's financial resources;

(5) Any other matter the Superintendent considers appropriate in enforcing the act.

However, the Superintendent is not permitted to impose a fine under the act if the Superintendent has imposed or will impose a fine under another provision of the Revised Code for the same conduct.

An order to pay a fine is enforceable in any court of common pleas in Ohio. All fines collected under the act must be paid to the Superintendent and deposited into the state treasury to the credit of the Consumer Finance Fund created under ongoing law.

Actions against federally chartered financial institutions (sec. 1349.34(G)(1)). The Superintendent of Financial Institutions may take any of the actions set forth above with respect to any person *other than* a federally chartered financial institution or its operating subsidiaries. If it appears to the Superintendent that a federally chartered financial institution or its operating subsidiary has engaged in, is engaging in, or is about to engage in, any activity that may constitute a failure to comply with the act, the Superintendent may present evidence of the activity to the institution's appropriate federal regulatory authority, along with any recommendations regarding the imposition of specific sanctions.

Statute of limitations; exclusive remedies (sec. 1349.34(G)(2), (H), and (I)). The act provides that the above-described remedies are cumulative and concurrent, and the exercise of one remedy by the Superintendent of Financial Institutions does not preclude or require the exercise of any other remedy. Any action taken by the Superintendent under the act must be commenced within three years after the alleged compliance failure.

The act provides also that the remedies available to the Superintendent under this provision or to the appropriate federal regulatory authority, the right of rescission described above, and the criminal penalty provided in the act constitute the sole and exclusive remedies for any failure to comply with the act.

Office of Consumer Affairs

(sec. 1349.37)

The act creates the Office of Consumer Affairs within the Division of Financial Institutions. The responsibilities of the Office include, at a minimum, all of the following:

(1) Providing education to Ohio residents regarding borrowing and related financial topics;

(2) Providing referrals to credit counseling services;

(3) Receiving complaints regarding alleged failures to comply with the act;

(4) Contacting the persons that are the subject of those complaints, on behalf of the consumers;

(5) Referring matters to the Superintendent of Financial Institutions for action under the act.

General rule-making authority; annual report

(secs. 1349.35 and 1349.36)

The act authorizes the Superintendent of Financial Institutions to adopt, in accordance with the Administrative Procedure Act, reasonable rules to administer and enforce the act and to carry out its stated purpose.

The Superintendent must include, as part of the annual report required by ongoing law, the number of complaints received, the number of enforcement actions taken, and any other relevant data regarding covered loans.

Relationship of state and local laws regarding lending

In general, the act states the intent of the General Assembly on the relationship of state and local laws regarding the regulation of loans and other forms of credit. In doing so, the act makes the following statements and declarations:

Sole regulation by the state

(sec. 1.63(A); Section 3(A) to (C))

The act specifies that the state solely is to regulate the business of originating, granting, servicing, and collecting loans and other forms of credit in Ohio and the manner in which any such business is conducted. It further provides that this regulation is in lieu of all other regulation of such activities by any municipal corporation or other political subdivision.

In addition, the act provides that the provisions of the Revised Code, including, but not limited to, Titles 11, 13, 17, and 47 (laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions), which provisions relate to the origination, granting, servicing, and collection of loans and other forms of credit, prescribe rules of conduct upon citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout Ohio under the same circumstances and conditions, and constitute general laws within the meaning of Section 3 of Article 18 of the Ohio Constitution (see **COMMENT** 2). The act states that these provisions of the Revised Code have been enacted in furtherance of the state's police powers.

The act provides also that silence in the Revised Code (including, but not limited to, Titles 11, 13, 17, and 47) with respect to any act or practice in the origination, granting, servicing, or collection of loans or other forms of credit is not to be interpreted to mean that the state (1) has not completely occupied the field or (2) has only set minimum standards in its regulation of lending and other credit activities.

Conflict of local laws with the Revised Code

(sec. 1.63(B) and (C))

The act specifies that any ordinance, resolution, regulation, or other action by a municipal corporation or other political subdivision regulating, directly or indirectly, the origination, granting, servicing, or collection of loans or other forms of credit, constitutes a conflict with the Revised Code (including, but not limited to, Titles 11, 13, 17, and 47) and with the uniform operation throughout the state of lending and other credit provisions. Such ordinances, resolutions, regulations, and other actions are preempted.

The act provides also that any ordinance, resolution, regulation, or other action by a municipal corporation or other political subdivision constitutes a conflict with the Revised Code (including, but not limited to, Titles 11, 13, 17, and 47) and is preempted, if such ordinance, resolution, regulation, or other action does either of the following:

(1) Disqualifies a person, or its subsidiaries or affiliates, from doing business with the municipal corporation or other political subdivision based upon the acts or practices of the person, or its subsidiaries or affiliates, as an originator, grantor, servicer, or collector of loans or other forms of credit;

(2) Imposes reporting requirements or other obligations upon a person, or its subsidiaries or affiliates, based upon the person's, or its subsidiaries' or affiliates', acts or practices as an originator, grantor, servicer, or collector of loans or other forms of credit.

Legislative intent

(Sections 3(D) and 4)

The act specifies that it is the intent of the General Assembly to entirely preempt municipal corporations and other political subdivisions from the regulation and licensing of lending and other credit activities. It states also that its enactment of these preemption provisions (1) is intended as a clarification of the law and not as a substantive change in the law and (2) expresses the legislative intent of the General Assembly currently and at the time of the original enactment of the provisions of the Revised Code (including, but not limited to, Titles 11, 13, 17, and 47) relating to the origination, granting, servicing, and collection of loans and other forms of credit.

Exceptions

(sec. 1.63(E) and (F))

The act states that it is *not* to be construed to invalidate or prohibit any ordinance, resolution, regulation, or other action by a municipal corporation or other political subdivision (1) to establish and administer voluntary neighborhood reinvestment programs in furtherance of the goals and purposes of the federal Community Reinvestment Act of 1977 or (2) that is required to meet the criteria for adequacy of law established by the United States Department of Housing and Urban Development in order to obtain certification as a Fair Housing Assistance Program.

Severability

(sec. 1.63(D))

The act states that if any of its preemption provisions, or any application of any of those provisions, is for any reason held to be illegal or invalid, the illegality or invalidity does not affect any legal and valid provision or application of those provisions, and the provisions and applications are severable.

Predatory Lending Study Committee

(Section 5)

The act creates the Predatory Lending Study Committee to conduct a thorough investigation of the impact of predatory lending practices on the citizens and communities of Ohio. Such practices include loan flipping, balloon payments, origination fees, prepayment penalties, single premium credit insurance, packing unnecessary insurance coverages, lending without due regard to ability to pay or to tangible benefits to consumers, payments to home improvement contractors, foreclosure rates, appropriateness of subprime loans for customer populations, collusion among occupations related to real estate loans, and equity stripping. The Study Committee is required to (1) identify and evaluate current state and federal laws, rules, and regulations that address fraud, misrepresentation, and other deceptive practices in mortgage lending or origination, (2) evaluate the effectiveness of Am. Sub. S.B. 76 of the 124th General Assembly (relative to mortgage brokers and loan officers) in deterring these practices and make recommendations it determines necessary to achieve that deterrence, and (3) review the operation of the Office of Consumer Affairs within the Division of Financial Institutions, including its outreach efforts to provide education regarding predatory lending, borrowing, and related financial topics and, based on the effectiveness of its operation, make recommendations regarding its continued funding.

The Study Committee is to consist of the following 15 members:

--Three members of the Senate appointed by the President of the Senate, two of whom are members of the majority party and one of whom is a member of the minority party;

--Three members of the House of Representatives appointed by the Speaker of the House of Representatives, two of whom are members of the majority party and one of whom is a member of the minority party;

--The Director of the Department of Commerce or the Director's designee;

--The Attorney General or the Attorney General's designee;

--The Director of Aging or the Director's designee;

--Three members representing consumer advocacy organizations, as follows: (1) one representative from the Coalition on Homelessness and Housing in Ohio, appointed by the President of the Senate, (2) one representative from the Ohio chapter of AARP, appointed by the Speaker of the House of Representatives, and (3) one representative from a nonprofit housing organization, appointed by the President of the Senate.

--Three members representing the lending community, two of whom are appointed by the Speaker of the House of Representatives and one of whom is appointed by the President of the Senate.

The Speaker of the House of Representatives must designate one of the members of the Study Committee to serve as chairperson. The Study Committee is to meet initially within 60 days after the appointment of members, and at least every 90 days thereafter, at the call of the chairperson. The chairperson must consider holding some regional public hearings to ensure that perspectives from throughout Ohio are presented. Study Committee members are to serve without compensation or reimbursement, and vacancies are to be filled in the same manner as the original appointment. The act requires the Department of Commerce to provide the Study Committee with any necessary staff, facilities, supplies, and services.

The findings of the Study Committee are to be submitted to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate not later than June 30, 2003. The report must include recommendations on legislation related to predatory lending. Upon submission of the report, the Study Committee will cease to exist.

COMMENT

1. On December 12, 2001, the Federal Reserve Board adopted an amendment to the interest rate based "trigger" of HOEPA, which amendment takes effect October 1, 2002. The amendment takes a two-tiered approach. For first-lien loans, the interest rate trigger is lowered to eight percentage points; the trigger for subordinate-lien loans remains unchanged. (12 C.F.R. 226.32(a).)

2. Section 3 of Article 18 of the Ohio Constitution permits a municipal corporation to enact laws, including those relating to self-government and police powers, that do not conflict with "general laws" of the state of Ohio. These constitutionally granted powers are known as "home rule" powers. Because these powers originate in the Constitution, laws passed by the General Assembly that interfere with them are invalid as applied to municipal corporations unless those laws otherwise are sanctioned by the Constitution.

Thus, in order for a state law to prevent a municipal corporation ordinance from being effective, (1) the state law must be a *general law,* and (2) the municipal corporation ordinance must conflict with this state law. Determining what constitutes a "general law" and the extent of home rule powers is a matter of court interpretation of the municipal home rule powers provided in Ohio's Constitution. Consequently, a court may consider the statements and declarations of the act and accept or reject them in accordance with its interpretation of the Constitution.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	10-02-01	p.	866
Reported, H. Financial Institutions	10-17-01	p.	947
Passed House (73-18)	10-18-01	pp.	961-964
Reported, S. Finance & Financial Institutions	02-05-02	p.	1414
Passed Senate (21-12)	02-05-02	pp.	1416-1418
House concurred in Senate amendments (56-39)	02-12-02	pp.	1373-1374

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