



H.B. 386*

124th General Assembly

(As Reported by H. Financial Institutions)

Reps. Blasdel, Salerno, Carmichael, DeWine, Raga, Hoops, Metelsky, Schaffer, G. Smith, Allen, Webster, Collier, Reidelbach, Seitz, Ogg, Olman, Schmidt, Carano, Roman, Hagan, Latell, Schneider, Jolivette, Faber, Lendrum, White, Calvert, Setzer, Reinhard, Sulzer

BILL SUMMARY

- ? Specifies that the state of Ohio solely regulates activities related to the lending and credit business in the state in lieu of any regulation of lending or credit activities by a political subdivision, including a municipal corporation.
- ? Provides 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.
- ? Provides that silence in the Revised Code with respect to lending and credit acts or practices should not be interpreted to mean that the state of Ohio has not completely occupied or has only set minimum standards in the regulation of lending and other credit activities.
- ? Specifies the intent of the General Assembly to preempt entirely political subdivision, including municipal corporation, regulation and licensing of lending and credit activities and specifies the legislative intent of the General Assembly currently and at the time of enactment of provisions of the Revised Code regulating lending and credit activities.
- ? Expressly makes provisions of the bill severable.

* *This analysis was prepared before the report of the House Financial Institutions Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

CONTENT AND OPERATION

Sole regulation by the state of Ohio of credit and lending businesses

(sec. 1.63(A); Section 2(A) to (C))

The bill specifies that the state of Ohio solely regulates 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. The bill further provides that this regulation is in lieu of all other regulation of such activities by any municipal corporation or other political subdivisions.

In addition, the bill provides that "the provisions of the Revised Code, including, but not limited to," laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions included in "Titles 11, 13, 17, and 47, relating 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**). The bill also specifies that the provisions of the Revised Code (including, but not limited to, laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions included in Titles 11, 13, 17, and 47) relating to the origination, granting, servicing, and collection of loans and other forms of credit have been enacted in furtherance of the police powers of the state.

And the bill provides that silence in the Revised Code (including, but not limited to, laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions in 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 are not to be interpreted to mean that the state of Ohio (1) has not completely occupied the field or (2) has only set minimum standards in its regulation of lending and other credit activities.

Conflict with laws of a municipal corporation or other political subdivision

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

The bill 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, is preempted, because such ordinance, resolution, regulation, or other action constitutes a conflict with the Revised Code (including, but not limited to,

laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions included in Titles 11, 13, 17, and 47). In addition, the bill provides that such ordinance, resolution, regulation, or other action constitutes a conflict with the uniform operation throughout the state of lending and other credit provisions.

The bill also provides 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, laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions included in 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 such municipal corporation or other political subdivision based upon the acts or practices of such person, or its subsidiaries or affiliates, as an originator, grantor, servicer, or collector of loans or other forms of credit, or

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

Legislative intent

(Sections 2(D) and 3)

The bill 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. In addition, the bill provides that its enactment is intended as a clarification of existing law and not as a substantive change in the law. Finally, according to the bill, its enactment expresses the legislative intent of the General Assembly currently and at the time of the original enactments of the provisions of the Revised Code (including, but not limited to, laws regulating financial institutions, commercial transactions, corporations and partnerships, and occupations and professions included in Titles 11, 13, 17, and 47) relating to the origination, granting, servicing, and collection of loans and other forms of credit.

Severability

(sec. 1.63(D))

The bill specifies that if any of its provisions, or any application of any provision of the bill, 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 the bill's provisions. And the bill provides that its provisions and applications are severable.

COMMENT

Section 3 of Article 18 of the Ohio Constitution permits a municipal corporation to enact laws, including those relating to self-government, police powers, and ownership and operation of public utilities, 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.

Section 3 of Article 18 of the Ohio Constitution specifically provides:

Municipalities shall have authority to exercise all powers of self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

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 determining home rule powers is a matter of court interpretation of the municipal home rule powers provided in Ohio's Constitution. Thus, a court may consider the statements and declarations of the bill and accept or reject them in accordance with its interpretation of the Constitution.

Municipal home rule powers are explained in a recent Members Only Brief, titled "Municipal Home Rule" (February 12, 2001), prepared by the Legislative Service Commission for members of the General Assembly. This Brief may be consulted for more information about municipal home rule, including court cases interpreting it.



HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-01	p. 866
Reported, H. Financial Institutions	---	---

H0386-RH.124/jc

