



**S.B. 162**

126th General Assembly  
(As Introduced)

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**BILL SUMMARY**

- Modifies the Mortgage Loan Law with respect to advertising requirements and remedies for violations of the Law.
- Modifies the Mortgage Brokers/Loan Officers Law with respect to its application, advertising requirements, duty to act on behalf of a buyer, and remedies for violations of the Law.
- Subjects transactions between dealers in intangibles and their customers, and certain transactions between financial institutions and their customers, to the Consumer Sales Practices Act.
- Makes revisions to the Consumer Credit Mortgage Loan Law relating to its application, prohibited acts and practices, and remedies for violations of the Law.
- Enacts additional consumer protections relating to mortgages.

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**CONTENT AND OPERATION**

**Mortgage Loan Law**

The Mortgage Loan Law (R.C. 1321.51 to 1321.60 and 1321.99) prohibits any person from (1) advertising that the person is engaged in the business of making loans secured by a mortgage on a borrower's real estate that is other than a first lien on the property or (2) engaging in the business of lending or collecting money or credit for such loans, without first obtaining a certificate of registration from the Division of Financial Institutions of the Department of Commerce. Generally, the Law regulates certain business practices of registrants and the terms and conditions of second mortgage loans and other loans made by registrants.

### Advertising

(R.C. 1321.60)

Under current law, advertising for loans subject to the Mortgage Loan Law cannot be "false, misleading, or deceptive." The bill provides additional requirements for such advertising. Under the bill, the advertisement must disclose the name and street address of the registrant and the number designated on the certificate of registration that is issued by the Superintendent of Financial Institutions to the registrant. If the advertisement indicates that special terms, reduced rates, guaranteed rates, particular rates, or other special features are available, the advertisement clearly must disclose any applicable limitations to the availability of these terms, rates, or special features. Additionally, the advertisements are required to comply with the regulations promulgated by the Federal Reserve Board pursuant to the federal Truth In Lending Act. (See 12 CFR 226.16.)

### Remedies for violations

(R.C. 1321.56)

The Mortgage Loan Law currently sets forth the interest that may be charged on a loan, how that interest is to be computed, terms regarding loan payments, and the additional charges and fees that may be charged by a registrant, including loan origination charges, certain closing costs, and default charges (R.C. 1321.57, not in the bill). Any person that willfully violates this provision is required to forfeit to the borrower the amount of interest the borrower paid.

Under the bill, if the victim of the violation is an elderly person or disabled adult, the elderly person or disabled adult borrower may bring an action. If they prevail, a court must award at least treble damages for the injury suffered, plus reasonable attorney's fees and court costs. ("**Elderly person**" means a person age 65 or older. "**Disabled adult**" means a person age 18 or older who (1) has some impairment of body or mind that makes the person unable to work for an extended period of time *or* (2) has been certified as permanently and totally disabled by an agency of Ohio or of the United States that has the function of so classifying persons.)

### Mortgage Brokers/Loan Officers Law

The Mortgage Brokers/Loan Officers Law (R.C. 1322.01 to 1322.12 and 1322.99) prohibits any person from doing the following:

(1) Acting as a mortgage broker without first having obtained a certificate of registration from the Superintendent of Financial Institutions for every office to

be maintained by the person for the transaction of business. It also prohibits any person from acting as a mortgage broker under the authority of a registrant or person exempt from the Law without first having obtained a certificate of registration from the Superintendent.

(2) Acting as a loan officer without first having obtained a license from the Superintendent.

### **Exemptions**

(R.C. 1322.02)

Under existing law, a number of persons are exempt from the Mortgage Brokers/Loan Officers Law *but only* with respect to business engaged in or authorized by their charter, license, authority, approval, or certificate or as otherwise authorized by the Law. The bill eliminates the exemptions for all of the following:

(1) A bank, savings bank, savings and loan association, or credit union;

(2) A person registered under the Mortgage Loan Law, provided that not more than 5% of the person's mortgage loans constitute table-funding or warehouse-lending mortgage loans *and* the person is not also registered or licensed under the Mortgage Brokers/Loan Officers Law;<sup>1</sup>

(3) A "mortgage banker," which is defined as any person that makes, services, buys, or sells mortgage loans, that underwrites the loans, and that meets at least one of the following criteria:

(a) The person has been directly approved by the U.S. Department of Housing and Urban Development (HUD) as a nonsupervised mortgagee with participation in the direct endorsement program. This includes a person that has been directly approved by HUD as a nonsupervised mortgagee with participation in the direct endorsement program and that makes loans in excess of the applicable loan limit set by the Federal National Mortgage Association (FNMA), provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of HUD. This exemption, however, does *not* include a mortgagee approved as a loan correspondent.

(b) The person has been directly approved by the FNMA as a seller/servicer. This includes a person that has been directly approved by the

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<sup>1</sup> For the definitions of "table-funding mortgage loan" and "warehouse-lending mortgage loan," see R.C. 1322.01.

FNMA as a seller/servicer and that makes loans in excess of the applicable loan limit set by the FNMA, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the FNMA.

(c) The person has been directly approved by the Federal Home Loan Mortgage Corporation (FHLMC) as a seller/servicer. This includes a person that has been directly approved by the FHLMC as a seller/servicer and that makes loans in excess of the applicable loan limit set by the FHLMC, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the FHLMC.

(d) The person has been directly approved by the U.S. Department of Veterans Affairs as a nonsupervised automatic lender. This exemption, however, does *not* include a person directly approved by the Department as a nonsupervised lender, an agent of a nonsupervised automatic lender, or an agent of a nonsupervised lender.

**Duty to act on behalf of a buyer**

(R.C. 1322.08)

Currently registrants are required, among other things, to maintain a separate depository account with a financial institution into which all bona fide third-party fees received from buyers are to be deposited. The bill additionally requires that registrants safeguard and account for moneys handled on behalf of a buyer and that they (1) comply with reasonable and lawful instructions of a buyer, (2) act with reasonable care, skill, and diligence on behalf of a buyer, and (3) make reasonable efforts to secure a loan the terms of which are reasonably advantageous to the buyer, considering all circumstances applicable to the buyer, including rates, charges, repayment terms, and available loan options.

**Advertising**

(R.C. 1322.09)

Mortgage brokers are currently required to disclose, in any advertisement relating to the broker's services, the name and street address of the broker and the number designated on the broker's certificate of registration. The bill modifies this provision by requiring that the disclosure be made "clearly" *and* by requiring that the disclosure include, if the advertisement indicates that special terms, reduced rates, guaranteed rates, particular rates, or other special features are available, any applicable limitations to the availability of these terms, rates, or special features. Additionally, advertisements are required to comply with the regulations

promulgated by the Federal Reserve Board pursuant to the federal Truth In Lending Act. (See 12 CFR 226.16.)

**Remedies for violations**

(R.C. 1322.11)

Existing law permits a buyer injured by specified violations of the Mortgage Brokers/Loan Officers Law to bring an action for recovery of damages *and* allows for an award of punitive damages. The bill adds that, if the injured buyer is an elderly person or disabled adult and the injured buyer prevails, a court must award at least treble damages for the injury suffered, plus reasonable attorney's fees and court costs. ("**Elderly person**" means a person age 65 or older. "**Disabled adult**" means a person age 18 or older who (1) has some impairment of body or mind that makes the person unable to work for an extended period of time or (2) has been certified as permanently and totally disabled by an agency of Ohio or of the United States that has the function of so classifying persons.)

**Consumer Sales Practices Act**

(R.C. 1345.01)

Among other things, the Consumer Sales Practices Act (R.C. Chapter 1345.) prohibits specified unfair, deceptive, or unconscionable acts or practices in connection with a "consumer transaction." It authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies. It also provides consumers with a private right of action. In an individual action, a consumer generally may rescind the transaction or recover the individual's damages. In certain circumstances, the consumer may recover three times the amount of actual damages or \$200, whichever is greater, or recover damages or other appropriate relief in a class action. The Act also permits consumers to seek a declaratory judgment, an injunction, or other appropriate relief against an act or practice that constitutes a violation. The court may award to the prevailing party a reasonable attorney's fee if the consumer brought an action that is groundless and filed the action in bad faith *or* the violation was knowingly committed.

For purposes of the Act, "**consumer transaction**" is defined as a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. Transactions *excluded* from the definition of "consumer transaction" include transactions between public utilities and their customers; transactions between attorneys, physicians, or dentists and their clients or patients; and

transactions between financial institutions, dealers in intangibles, or insurance companies and their customers.<sup>2</sup>

Under the bill, "**consumer transaction**" expressly *includes* transactions between dealers in intangibles and their customers and both of the following transactions between financial institutions and their customers:

(1) Loan servicing and escrow account transactions;

(2) Debt collection activities to collect a debt owed the financial institution.<sup>3</sup>

### **Consumer Credit Mortgage Loan Law**

#### **Background**

Sub. H.B. 386 of the 124th General Assembly was enacted to generally conform Ohio law with the federal Home Ownership and Equity Protection Act of 1994 (HOEPA) with respect to specified consumer loans, "in order to facilitate the uniform administration and enforcement of state and federal laws on the regulation of certain high cost mortgages" (R.C. 1349.32). The act provides disclosure requirements, and prohibits creditors from engaging in certain practices, in relation to "covered loan" transactions. Additionally, it (1) gave the Department of Commerce civil enforcement powers, (2) created the Office of Consumer Affairs within the Division of Financial Institutions, (3) expressly preempted local regulation of lending and credit, and (4) created the Predatory Lending Study Committee. (See R.C. 1.63 and 1349.25 to 1349.37.)

#### **Application: definition of "covered loan"**

(R.C. 1349.25)

As mentioned above, the disclosure requirements and prohibited practices of the Consumer Credit Mortgage Loan Law apply with respect to "covered loans." Under current law, "**covered loan**" means a consumer credit mortgage

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<sup>2</sup> A "**dealer in intangibles**" is a person with an office in Ohio who engages in a business that consists primarily of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities. Financial institutions, insurance companies, and institutions used exclusively for charitable purposes are not considered dealers in intangibles. (R.C. 5725.01(B).)

<sup>3</sup> "**Financial institution**" is defined in R.C. 5725.01(A).

loan transaction that (1) involves property located within Ohio *and* (2) is considered a "mortgage" under HOEPA.

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),<sup>4</sup> 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;

(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 bill modifies the definition of "**covered loan**" to additionally include the following:

(1) A loan in which the total points and fees payable by the consumer at or before closing will exceed 5% of the total loan amount or \$400, whichever is greater. "**Points and fees**" has the same meaning as in HOEPA but also includes (a) any compensation paid directly or indirectly by any source to a mortgage broker or other creditor in connection with a loan, (b) any prepayment penalty exceeding 1% of the original principal amount of the loan or payable five years or more after the date of closing on the loan, (c) any premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life or health insurance, *except* any premiums calculated and paid on a monthly or other periodic basis,<sup>5</sup> (d)

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<sup>4</sup> As defined in HOEPA, "**residential mortgage transaction**" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of the dwelling. "**Open end credit plan**" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge that may be computed from time to time on the outstanding unpaid balance.

<sup>5</sup> 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

any payments financed by the creditor, directly or indirectly, for any debt cancellation or debt suspension agreement or contract, *except* any payments calculated and paid on a monthly or other periodic basis.

(2) A residential mortgage transaction that has total points and fees payable as described in (1), above.

(3) A transaction under an open end credit plan that has total points and fees payable as described in (1), above, except that the points and fees payable by the consumer *also* includes any additional fees required to be paid by a borrower to draw down an amount equal to the total credit line *and* the maximum prepayment penalty applicable under the terms of the loan.

The bill also adds a definition of "**total loan amount.**" Under the bill, "total loan amount" means the principal of the loan minus those points and fees described in (1) through (3), above, that are included in the principal amount of the loan. For a transaction under an open credit plan, "total loan amount" means the total line of credit allowed under the loan at closing.

### **Prohibited acts and practices**

**Prepayment penalties** (R.C. 1349.27(A)(1)). Creditors are currently prohibited from making a covered loan that includes 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. There is, however, one circumstance under which a prepayment penalty may be imposed. The bill eliminates this exception to the prohibition.

**Refinancing** (R.C. 1349.27(G)). Existing law prohibits creditors, within one year after having made a covered loan, from refinancing a covered loan to the same borrower into another covered loan, unless the refinancing is in the consumer's interest. The bill eliminates this prohibition, but enacts a related prohibition under a separate statute (see "**Additional consumer protections,**" below).

**Replacement of low-rate loans** (R.C. 1349.27(J)). Under current law, creditors are prohibited from 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.<sup>6</sup> The bill also eliminates this prohibition,

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*company to insure the creditor against loss caused by a mortgagor's default (R.C. 1349.25(D)(2)(b)(iii)).*

<sup>6</sup> Note: this prohibition is not included in HOEPA.

but enacts a related one under a separate statute (see "**Additional consumer protections**," below).

### **Remedies for violations**

(R.C. 1349.29)

Current law provides consumers with a right to rescind a covered loan transaction (in accordance with HOEPA) if it includes a prohibited term. The bill provides additional remedies. Under the bill, if a creditor fails to provide the required disclosures or engages in a prohibited act or practice, a consumer may bring an action for damages in accordance with HOEPA. Additionally, if the victim of the violation is an elderly person or disabled adult and the victim prevails, the court must award at least treble damages for the injury suffered, plus reasonable attorney's fees and court costs. ("**Elderly person**" means a person age 65 or older. "**Disabled adult**" means a person age 18 or older who (1) has some impairment of body or mind that makes the person unable to work for an extended period of time *or* (2) has been certified as permanently and totally disabled by an agency of Ohio or of the United States that has the function of so classifying persons.)

### **Conformance of Ohio law to HOEPA**

(R.C. 1349.32)

As mentioned above, current law states that the purpose of the Consumer Credit Mortgage Loan Law is to bring Ohio law into conformance with HOEPA and the regulations adopted under HOEPA by the Federal Reserve Board. Because the revisions proposed by the bill are *not* included in HOEPA, the "purpose" clause is modified accordingly.

### **Additional consumer protections**

(R.C. 1349.39)

The bill enacts a separate statute that prohibits a creditor, in connection with an agreement for a mortgage entered into with a consumer, from doing any of the following:

(1) Knowingly refinancing an existing mortgage with a new mortgage that fails to provide a reasonable, tangible net benefit to the consumer considering all of the circumstances, including the terms of the existing and new mortgages, the cost of the new mortgage, and the consumer's best interests;

(2) Refinancing, replacing, or consolidating a zero-interest or low-interest mortgage provided by a nonprofit or government program, unless a counselor approved by the U.S. Housing and Urban Development certifies that the new mortgage is in the consumer's best interest;

(3) Recommending or encouraging a consumer to default on a mortgage;

(4) Pyramiding late charges on a mortgage;

(5) Requiring a consumer to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum;

(6) Recovering attorney's fees in connection with collection of a late payment, unless a lawsuit actually is filed to collect the late payment.

For purposes of this statute, "**creditor**" is defined as any person that originates two or more mortgages in any 12-month period or any person that originates one or more mortgages through a mortgage broker. "**Mortgage**" means any transaction secured by a consumer's principal dwelling.

If any of the above prohibitions is violated, a consumer may bring an action for recovery of damages. These damages cannot be less than actual damages suffered by the consumer, plus reasonable attorney's fees and court costs. The bill also permits the awarding of punitive damages. If the injured consumer is an elderly person or disabled adult and the consumer prevails, a court is required to award at least treble damages for the injury suffered, plus reasonable attorney's fees and court costs. ("**Elderly person**" means a person age 65 or older. "**Disabled adult**" means a person age 18 or older who (1) has some impairment of body or mind that makes the person unable to work for an extended period of time *or* (2) has been certified as permanently and totally disabled by an agency of Ohio or of the United States that has the function of so classifying persons.)

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## HISTORY

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Introduced	07-28-05	p. 1367

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