



Bill Analysis

*Jennifer A. Parker
Daniel M. DeSantis*

Legislative Service Commission

Sub. S.B. 185

126th General Assembly
(As Passed by the Senate)

Sens. Padgett, Schuring, Roberts, Carey, Amstutz, Armbruster, Brady, Dann, Fedor, Fingerhut, Grendell, Hagan, Harris, Jacobson, Miller, Prentiss, Spada, Zurz, Mumper, Clancy

BILL SUMMARY

- Modifies the application of, and damages available under, the Consumer Sales Practices Act.
- Generally prohibits the appraisal of real estate for a mortgage loan without state certification or licensure.
- Requires that a national criminal background check be conducted on all applicants for a real estate appraiser certificate or license, a mortgage broker certificate of registration, or a loan officer license.
- Modifies the Mortgage Brokers/Loan Officers Law with respect to pre-licensure examination, disclosure of information, record keeping, prohibited acts, fiduciary duties, pre-hearing suspensions, and enforcement.
- Modifies the Mortgage Loan Law and the Consumer Credit Mortgage Loan Law with respect to enforcement.
- Permits the Superintendents of Financial Institutions and Real Estate, for purposes of enforcement, to share confidential information about mortgage brokers and loan officers, real estate brokers and salespersons, and real estate appraisers with each other, the Superintendent of Insurance, the Attorney General, and local law enforcement agencies and prosecutors.
- Requires that information on the enforcement actions of the Department of Commerce and the Attorney General relative to mortgage lending be made available through the internet.

- Makes other changes with respect to mortgage lending.

TABLE OF CONTENTS

Consumer Sales Practices Act	3
Background	3
"Consumer transaction"	4
Assignee liability	5
Damages	6
Right of rescission.....	7
Real Estate Appraisers Law	7
Certification or license required.....	7
National criminal background checks	8
Offenses that may disqualify an applicant	8
Influencing an appraiser's judgment	9
Mortgage Brokers/Loan Officers Law.....	9
Background	9
National criminal background checks	10
Offenses that may disqualify an applicant	10
Pre-licensure examination.....	11
Mortgage loan origination disclosure statements; additional disclosures.....	11
Record keeping	12
Prohibited acts	12
Fiduciary duty.....	14
Pre-hearing suspensions	14
Enforcement	15
Mortgage Loan Law: enforcement	15
Consumer Credit Mortgage Loan Law: enforcement	16
Other provisions	17
Fiduciary duty of nonbank mortgage lenders	17
Sharing of confidential information among regulators.....	17
Electronic database of enforcement actions	18
Semi-annual reports on the operations of the Division of Financial Institutions	18

CONTENT AND OPERATION

Consumer Sales Practices Act

Background

(R.C. Chapter 1345.)

The Consumer Sales Practices Act (CSPA) prohibits "unfair or deceptive acts or practices" in connection with consumer transactions, such as falsely representing the characteristics of a product, falsely indicating that a specific price advantage exists, misrepresenting a warranty, or falsely indicating the need for a repair.¹ The CSPA also prohibits "unconscionable acts or practices" in consumer transactions, such as taking advantage of a person's inability to understand the transaction's terms, making misleading statements on which a consumer is likely to rely, selling goods when the supplier knows the consumer cannot pay in full, or selling services to a consumer who is unable to receive a substantial benefit from the purchase.²

The CSPA authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies.³ It also provides consumers with a private right of action.⁴ 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 may recover damages or other appropriate relief in a class action. The CSPA 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.

¹ R.C. 1345.02.

² R.C. 1345.03.

³ R.C. 1345.07.

⁴ R.C. 1345.09.

"Consumer transaction"

(R.C. 1345.01)

For purposes of the CSPA, "**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.⁵

Under the bill, "**consumer transaction**" expressly *includes* transactions between loan officers, mortgage brokers, and nonbank mortgage lenders and their customers, despite the exemptions described above. For these purposes:

--"**Loan officer**" has the same meaning as in the Mortgage Brokers/Loan Officers Law (R.C. 1322.01(E)), *except* that it does not include an employee of (1) a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under Ohio law or the laws of another state or the United States, (2) a subsidiary of such a bank, savings bank, savings and loan association, or credit union, or (3) an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

--"**Mortgage broker**" has the same meaning as in the Mortgage Brokers/Loan Officers Law (R.C. 1322.01(G)), *except* that it does not include (1) a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under Ohio law or the laws of another state or the

⁵ 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).) "**Financial institution**" is defined in R.C. 5725.01(A).

United States, (2) a subsidiary of such a bank, savings bank, savings and loan association, or credit union, (3) an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, or (4) an employee of any such entity.

--"**Nonbank mortgage lender**" means any person that engages in a mortgage loan transaction with a consumer, *except* for (1) a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under Ohio law or the laws of another state or the United States, (2) a subsidiary of such a bank, savings bank, savings and loan association, or credit union, or (3) an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

--"**Control**" of another entity means ownership, control, or power to vote 25% or more of the outstanding shares of any class of voting securities of the other entity, directly or indirectly or acting through one or more other persons.

--"**Credit union services organization**" has the same meaning as "CUSO" in 12 Code of Federal Regulations (C.F.R.) 702.2.

Assignee liability

(R.C. 1345.091)

The bill generally provides that no claim or defense under the CSPA, except a claim or defense of rescission by a consumer (see below), may be asserted by the Attorney General or any consumer against an assignee or purchaser of a mortgage loan for value if any one of the following applies:

(1) The violation was not committed by the assignee or purchaser after such assignment or purchase.

(2) The assignee or purchaser is not affiliated by common control with the seller of the loan at the time of such assignment or purchase and the loan was not in default at the time of such assignment or purchase.⁶

(3) The assignee or purchaser is a bank, savings bank, savings and loan association, credit union, or credit union service organization organized under the laws of this state, another state, or the United States; a subsidiary of such a bank, savings bank, savings and loan association, or credit union; or an affiliate that (a) controls, is controlled by, or is under common control with, such a bank, savings bank, savings and loan association, or credit union and (b) is subject to examination, supervision, and regulation, including with respect to the affiliate's compliance with applicable consumer protection requirements, by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

This provision of the bill applies, notwithstanding any other provision of the CSPA, and except as otherwise provided in 16 C.F.R. 433.2, as amended, or section 1317.031 or 1317.032 of the Revised Code (Holder in Due Course Doctrine).

Damages

(R.C. 1345.09)

As previously described, consumers are currently provided with a private right of action for violations of CSPA. In an individual action, a consumer may rescind the transaction or recover the consumer's "damages." In certain circumstances, the consumer may recover three times the amount of "actual damages" or \$200, whichever is greater, or recover "damages" in a class action. The bill specifies that, to be recoverable under the CSPA, the consumer's damages must be "**actual damages.**"

Additionally, the bill changes from permissive to mandatory the awarding of a reasonable attorney's fee to the prevailing party if the consumer brought or maintained an action that is groundless and filed or maintained the action in bad faith.

⁶ For purposes of this provision, a loan is considered to be in default if it is at least 30 days past due.

Right of rescission

(R.C. 1345.09(C)(2))

The bill states that, with respect to an action for rescission, revocation of a consumer transaction secured by a mortgage loan is only available to a consumer, in an individual action, and must occur not later than the time limit within which the right of rescission under the federal Truth in Lending Act expires.⁷

Real Estate Appraisers Law

(R.C. Chapter 4763.)

Certification or license required

(R.C. 4763.13 and 4763.19; Section 3)

Current law provides procedures for certifying "state-certified general real estate appraisers" and "state-certified residential real estate appraisers," for licensing "state-licensed residential real estate appraisers," and for registering "state-registered real estate appraiser assistants."⁸ However, the law does not preclude a person who is not licensed or certified from appraising real estate for compensation.

Under the bill, a person is prohibited from performing a real estate appraisal for a mortgage loan if the person is not licensed or certified.⁹ But this prohibition does *not* apply to a lender using a market analysis or price opinion, an internal valuation analysis, or an automated valuation model or report based on an automated valuation model, and any person providing that report to the lender, in performing a valuation for purposes of a loan application, as long as the lender (a) gives the consumer loan applicant a copy of any written market analysis or price opinion or valuation report based on an automated valuation model and (b) includes a disclaimer on that copy specifying that the valuation used for purposes of the application was obtained from a market analysis or price opinion or automated valuation model report and not from a person licensed or certified under the Real Estate Appraisers Law.

⁷ Under 15 U.S.C. 1635(f), an obligor's right of rescission generally expires three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first.

⁸ For the definitions of these terms, see R.C. 4763.01.

⁹ A violation of this prohibition is a misdemeanor of the first degree (R.C. 4763.99).

These provisions of the bill take effect six months after the bill's effective date.

National criminal background checks

(R.C. 109.572 and 4763.05(A))

The bill requires the Superintendent of Real Estate, upon the filing of an application for an initial certificate, license, or registration, to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), or a vendor approved by BCII, to conduct a criminal records check of the applicant based on the applicant's fingerprint. The Superintendent of BCII is to determine whether any information exists that indicates that the applicant has been convicted of or pleaded guilty to: (1) a violation of R.C. 2913.02 (theft and embezzlement), R.C. 2913.11 (passing bad checks), R.C. 2913.31 (forgery), R.C. 2913.51 (receiving stolen property), or R.C. 2925.03 (trafficking in drugs), (2) any other criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any crime involving money or securities, as set forth in R.C. Chapter 2909. (arson and related offenses), R.C. Chapter 2911. (robbery, burglary, trespass, and safecracking), R.C. Chapter 2913. (theft and fraud), R.C. Chapter 2915. (gambling), R.C. Chapter 2921. (offenses against justice and public administration), R.C. Chapter 2923. (conspiracy, attempt, complicity, weapons control, and corrupt activity), or R.C. Chapter 2925. (drug offenses), or (3) any existing or former law of Ohio, another state, or the United States that is substantially equivalent to those offenses.

The Superintendent of Real Estate must also request that the criminal records check include criminal record information from the Federal Bureau of Investigation. Any fee required for the records check is to be paid by the applicant.

Offenses that may disqualify an applicant

(R.C. 4763.05(H)(2) and 4763.06(A))

Under the bill, the Superintendent of Real Estate is prohibited from issuing *or* renewing a certificate, license, or registration to any person who has been convicted of or pleaded guilty to any criminal offense described above. However, if the person has pleaded guilty to or been convicted of such an offense, the Superintendent is prohibited from considering the offense if the person has proven to the Superintendent, by a preponderance of the evidence, that the person's activities and employment record since the conviction show that the applicant is

"honest, truthful, and of good reputation, and there is no basis in fact for believing that the person will commit such an offense again."

The bill requires that each renewal application include a statement, signed by the certificate holder, registrant, or licensee, that the certificate holder, registrant, or licensee has not, during the immediately preceding 12-month period, been convicted of or pleaded guilty to any such criminal offense.

Influencing an appraiser's judgment

(R.C. 4763.12(E) and 4763.99(B))

The bill prohibits any person, directly or indirectly, from knowingly compensating, instructing, inducing, coercing, or intimidating *or* attempting to compensate, instruct, induce, coerce, or intimidate, a certificate holder or licensee for the purpose of corrupting or improperly influencing their independent judgment with respect to the value of the dwelling offered as security for repayment of a mortgage loan. A violation of this prohibition is a fifth degree felony.

Mortgage Brokers/Loan Officers Law

Background

(R.C. 1322.01 to 1322.12)

To act as a mortgage broker in Ohio, existing law generally requires a person to obtain a certificate of registration from the Superintendent of Financial Institutions for every office the person maintains for the transaction of business. Similarly, it generally prohibits a person from acting as a loan officer without first obtaining a license from the Superintendent. 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. Among those exempt persons are banks, savings banks, savings and loan associations, and credit unions organized under the laws of this state, another state, or the United States, and any subsidiary or affiliate of a bank, savings bank, savings and loan association, or credit union. Any individual who is employed by an exempt person is also exempt to the extent the individual is acting within the scope of the individual's employment.

National criminal background checks

(R.C. 109.572, 1322.03, and 1322.031)

Upon the filing of an application for a mortgage broker certificate or loan officer license, the Superintendent currently is required to conduct an investigation of the applicant, which must include both a criminal records check based on the applicant's fingerprints and a civil records check. Under the bill, the Superintendent is to request the Superintendent of the Bureau of Identification and Investigation (BCII), or a vendor approved by BCII, to conduct a criminal records check, and to obtain criminal record information from the Federal Bureau of Investigation, in the same manner as is required of the Superintendent of Real Estate under the Real Estate Appraisers Law (see above). Likewise, the Superintendent of BCII is to determine whether any information exists that indicates that the applicant has been convicted of or pleaded guilty to any of the same criminal offenses involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities.

Offenses that may disqualify an applicant

(R.C. 1322.04 and 1322.041)

Existing law requires the Superintendent of Financial Institutions to issue a mortgage broker certificate of registration or a loan officer license if the Superintendent finds, among other things, that neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant has pleaded guilty to or been convicted of any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any criminal offense involving money or securities. Under the bill, the Superintendent must also find that the applicant and the other persons have not pleaded guilty to or been convicted of a violation of an existing or former law of this state, any other state, or the United States that substantially is equivalent to any of those criminal offenses.

As in current law, if the applicant or any of those other persons *has* pleaded guilty to or been convicted of such an offense, the Superintendent cannot consider the offense if the applicant has proven to the Superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction show that the applicant or other person is "honest, truthful, and of good reputation, and there is no basis in fact for believing that the applicant or other person will commit such an offense again."

The same provisions apply to an applicant for a loan officer's license, except for the requirement that the applicant show that "no shareholder, member, partner, operations manager, or employee of the applicant" has pleaded guilty to or been convicted of any such criminal offense.

Pre-licensure examination

(R.C. 1322.041(A)(5) and 1322.051)

Existing law requires each loan officer, within 90 days after the original issuance of the loan officer license, to successfully complete an examination approved by the Superintendent of Financial Institutions. The bill makes the successful completion of the examination a condition of licensure.

Mortgage loan origination disclosure statements; additional disclosures

(R.C. 1322.062 and 1322.063)

Mortgage brokers currently are required to deliver a mortgage loan origination disclosure statement (MLODS) to a buyer within three business days after taking an application for a loan. Among other things, the MLODS must include a description of the method by which the fee to be paid by the buyer to the mortgage broker will be calculated. Under the bill, the MLODS must also provide a "good faith estimate" of the total amount of that fee.

If the loan applied for will exceed 90% of the value of the real property, the bill requires the MLODS to include the following statement printed in boldface type of the minimum size of 16 points: "You are applying for a loan that is more than 90% of your home's value. It will be hard for you to refinance this loan. If you sell your home, you might owe more money on the loan than you get from the sale." Additionally, under the bill the MLODS must include the signature of the buyer to acknowledge receipt.

Currently, if there is any change in the information provided by an MLODS with respect to (1) the method by which the mortgage broker's fee is to be calculated or (2) the services the mortgage broker has agreed to perform for the buyer, the mortgage broker must provide the buyer with a revised MLODS no later than three days after the change occurs, or the date the loan is closed, whichever is earlier. The bill requires the delivery of a revised MLODS if there is a change in *any* of the information it provides. The revised document must include a written explanation of why the change occurred and must be given to the buyer no later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier. If an increase in the total amount of the fee to be paid by the buyer to the registrant is not disclosed pursuant to these requirements, the

mortgage broker is required to refund to the buyer the amount by which the fee exceeds the amount previously estimated. If the fee is financed into the loan, the registrant must also refund to the buyer the interest that would accrue over the term of the loan on that excess amount.

The bill also requires a mortgage broker to deliver to the buyer, not later than 24 hours before the loan is closed, a written disclosure that includes (1) a statement indicating whether property taxes will be escrowed and (2) a description of what is covered by the regular monthly payment, such as principal, interest, taxes, and insurance, as applicable.¹⁰

Record keeping

(R.C. 1322.06)

Current law requires mortgage brokers to maintain records pertaining to business transacted under the Mortgage Brokers/Loan Officers Law for four years. The bill clarifies that "records pertaining to business transacted" includes copies of all mortgage loan origination disclosure statements.

Prohibited acts

Material changes in loan terms (R.C. 1322.064). The bill prohibits mortgage brokers and loan officers from failing to timely inform the buyer (1) of any material change in the terms of the loan and (2) if the estimated cash out available to the buyer changes by more than 10%. For purposes of this provision, "material change" means:

--A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment;

--A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made;

--A change in the interest rate of more than 0.15%;

--A change in the regular monthly payment of principal and interest of more than 5%;

--A change regarding the escrow of taxes or insurance; or

--A change regarding the payment of private mortgage insurance.

¹⁰ A buyer injured by a mortgage broker's failure to comply with this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

To be "timely," the revised information must be provided to the buyer not later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier.¹¹

Unwritten promises to refinance (R.C. 1322.07). Mortgage brokers and loan officers are prohibited by the bill from promising to refinance a loan in the future at a lower interest rate or with more favorable terms, unless the promise is set forth in writing and is initialed by the buyer.¹²

Influencing an appraiser's judgment (R.C. 1322.07 and 1322.99). Mortgage brokers and loan officers are also prohibited from knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified under the Real Estate Appraisers Law for the purpose of corrupting or improperly influencing their judgment of with respect to the value of the dwelling offered as security for repayment of a mortgage loan. A violation of this prohibition is a fifth degree felony, and a buyer injured by a violation may bring an action for the recovery of damages.

Ownership interest in title insurance company; referrals (R.C. 1322.074 and 1322.075). The bill generally prohibits a mortgage broker, and any member of the mortgage broker's immediate family,¹³ from owning or controlling a majority interest in a title insurance company or appraisal company.¹⁴ This prohibition does *not* apply to any mortgage broker, or any member of the mortgage broker's immediate family, who--on the bill's effective date--owns or controls a majority interest in a title insurance company or appraisal company. However, (1) the mortgage broker and immediate family members cannot increase their interest in the company, (2) the interest is not transferable to a member of the mortgage broker's immediate family, and (3) if the mortgage broker is convicted

¹¹ A buyer injured by a violation of this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

¹² A buyer injured by a violation of this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

¹³ "Immediate family" means a spouse residing in the person's household and any dependent child (R.C. 1322.074(A)(1)).

¹⁴ "Appraisal company" is defined as a sole proprietorship, partnership, corporation, limited liability company, or any other business entity or association, that employs or retains the services of a person licensed or certified under the Real Estate Appraisers Law for purposes of performing residential real estate appraisals for mortgage loans (R.C. 1322.074(A)(1)).

of or pleads guilty to a criminal violation of the Mortgage Brokers/Loan Officers Law or any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, or drug trafficking, or any crime involving money or securities, the Superintendent of Financial Institutions may, as an alternative to any of the enforcement actions currently available, order the mortgage broker or immediate family members to divest their interest in the company.

The bill also prohibits mortgage brokers or loan officers from doing the following:

(1) Referring a buyer to a title insurance company or title insurance agent for title insurance or other title insurance services or products, or to an appraisal company, if the mortgage broker or loan officer, or a member of their immediate families, has (a) an ownership or investment interest in the company or agent, whether through debt, equity, or other means, or (b) any compensation arrangement with the company or agent that involves remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(2) Knowingly entering into an arrangement or scheme, including a cross-referral arrangement, that has a principal purpose of assuring referrals by a mortgage broker or loan officer to a particular title insurance company, title insurance agent, or appraisal company that would violate the prohibition in (1), above.

Fiduciary duty

(R.C. 1322.081)

The bill states that, with respect to a mortgage loan transaction, both the mortgage broker and loan officer are a fiduciary of the buyer and must use their best efforts to further the interest of the buyer, including complying with the buyer's reasonable and lawful instructions and acting with reasonable care, skill, and diligence on behalf of the buyer. Additionally, the duty cannot be waived or modified.

Pre-hearing suspensions

(R.C. 1322.10)

To protect the public interest, the bill authorizes the Superintendent of Financial Institutions to suspend, without a prior hearing, (1) the certificate of registration of a mortgage broker, or the license of a loan officer, who is convicted of or pleads guilty to a criminal violation of the Mortgage Brokers/Loan Officers Law or any criminal offense described in "**Offenses that may disqualify an**

applicant," above, or (2) the certificate of registration of a mortgage broker who violates the existing surety bond requirement (R.C. 1322.05).

These certificates of registration and licenses may subsequently be revoked by the Superintendent in accordance with the Administrative Procedure Act.

Enforcement

(R.C. 1322.11(B))

Currently, the Superintendent of Financial Institutions, the Attorney General, or a buyer may bring an action to enjoin a violation of the Mortgage Brokers/Loan Officers Law. The bill permits the prosecuting attorney of the county in which the action may be brought to bring an action to enjoin a violation *only if* the prosecuting attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.

With respect to criminal proceedings, the Superintendent is currently authorized to initiate such proceedings by presenting 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 prosecuting attorney's request, the Superintendent is required to present the evidence to the Attorney General, who may proceed with all the rights, privileges, and powers conferred by law on prosecuting attorneys.

The bill permits the prosecuting attorney to directly initiate criminal proceedings, and permits the Attorney General to initiate criminal proceedings *only if* the Attorney General first presents evidence of criminal violations to the prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

The bill requires the clerk of court, when a judgment becomes final, to mail a copy of the judgment, including supporting opinions, to the Superintendent.

Mortgage Loan Law: enforcement

(R.C. 1321.541)

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. Generally, the Law regulates certain

business practices of registrants and the terms and conditions of second mortgage loans and other loans made by registrants.

The bill authorizes the Attorney General to directly bring an action to enjoin a violation of the Mortgage Loan Law. The prosecuting attorney of the county in which the action may be brought is authorized to bring an action to enjoin a violation of the Law *only if* the prosecuting attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.

With respect to criminal proceedings, the bill authorizes the prosecuting attorney to directly initiate such proceedings. It also permits the Attorney General to initiate criminal proceedings *only if* the Attorney General first presents evidence of criminal violations to the prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

Consumer Credit Mortgage Loan Law: enforcement

(R.C. 1349.31)

The Consumer Credit Mortgage Loan Law (R.C. 1349.25 to 1349.37) was enacted to generally conform Ohio law with the federal Home Ownership and Equity Protection Act of 1994 (HOEPA). The act provides disclosure requirements, and prohibits creditors from engaging in certain practices, in relation to certain "high-cost" mortgage loans.

The bill authorizes the Superintendent of Financial Institutions or the Attorney General to directly bring an action to enjoin a violation of the Law. The prosecuting attorney of the county in which the action may be brought is permitted to bring an action to enjoin a violation *only if* the prosecuting attorney first presents evidence of the violation to the Attorney General and, within a reasonable period of time, the Attorney General has not agreed to bring the action.

With respect to criminal proceedings, the Superintendent is currently authorized to initiate such proceedings by presenting 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 prosecuting attorney's request, the Superintendent is required to present the evidence to the Attorney General, who may proceed with all the rights, privileges, and powers conferred by law on prosecuting attorneys.

The bill permits the prosecuting attorney to directly initiate criminal proceedings, and permits the Attorney General to initiate such proceedings *only if* the Attorney General first presents evidence of criminal violations to the

prosecuting attorney and, within a reasonable period of time, the prosecuting attorney has not agreed to prosecute the violations.

Other provisions

Fiduciary duty of nonbank mortgage lenders

(R.C. 1349.41)

The bill provides that, with respect to a mortgage loan transaction with a consumer¹⁵ who has less than \$25,000 of net worth, a nonbank mortgage lender is a fiduciary of the consumer and must use the lender's best efforts to further the interest of the consumer, including complying with the consumer's reasonable and lawful instructions and acting with reasonable care, skill, and diligence on behalf of the consumer, *if* the transaction does not involve a mortgage broker registered under the Mortgage Brokers/Loan Officers Law or such a broker does not have a material role in the transaction. The bill states that this fiduciary duty cannot be waived or modified. However, the bill specifies that the fiduciary duty does not require a lender to seek loan terms more favorable to the consumer from, or to make referrals to, any non-affiliated lending institution.

For purposes of this provision, "nonbank mortgage lender" has the same meaning as set forth in "**Consumer Sales Practices Act, "Consumer transaction"**," above. The term does not include a person that purchases or is assigned a loan or that functions solely as the servicer of a loan. And "net worth" means the net worth of an individual, as defined by common lending practices, with the following assets excluded: (1) the value of the home that is the subject of the transaction, (2) any social security or pension payments or assets, and (3) any life insurance assets.

Sharing of confidential information among regulators

(R.C. 1322.061, 4735.05, and 4763.03)

The bill states that the confidentiality requirements of the Mortgage Brokers/Loan Officers Law, the Real Estate Brokers Law (R.C. Chapter 4735.), and the Real Estate Appraisers Law do *not* prevent the Superintendent of Financial Institutions or the Superintendent of Real Estate from sharing information regarding mortgage brokers and loan officers, real estate brokers and salespersons, and real estate appraisers for purposes relating to the administration of those laws. Such information may also be shared with the Superintendent of Insurance for

¹⁵ "Consumer" is defined as an individual to whom credit is offered or extended primarily for personal, family, or household purposes (R.C. 1349.41(A)(1)).

purposes relating to the administration of the Title Insurance Law (R.C. Chapter 3953.), and with the Attorney General, local law enforcement agencies, and local prosecutors.¹⁶ The information remains confidential.

Electronic database of enforcement actions

(R.C. 1349.43)

Under the bill, the Department of Commerce must establish and maintain an electronic database accessible through the internet that contains information on the following:

(1) The enforcement actions taken by the Superintendent of Financial Institutions for each violation of or failure to comply with any provision of the Mortgage Brokers/Loan Officers Law, *upon final disposition of the action*;

(2) The enforcement actions taken by the Attorney General under the Consumer Sales Practices Act (CSPA) against loan officers, mortgage brokers, and nonbank mortgage lenders that--under the bill--are subject to the CSPA, *upon final disposition of the action*;

(3) All judgments by Ohio courts, concerning which *appellate remedies have been exhausted or lost by the expiration of the time for appeal*, finding (a) a violation of the Mortgage Brokers/Loan Officers Law or (b) that specific acts or practices by a loan officer, mortgage broker, or nonbank mortgage lender violate the CSPA.

The Attorney General is required to submit the information related to the CSPA to the Department on the first day of each January, April, July, and October.

Semi-annual reports on the operations of the Division of Financial Institutions

(R.C. 1349.44)

The Superintendent of Financial Institutions is required by the bill to report semi-annually to the Governor and the General Assembly on the operation of the Division of Financial Institutions with respect to:

¹⁶ *The Mortgage Brokers/Loan Officers Law already provides that the Superintendent of Financial Institutions is not prevented from sharing such information with the Attorney General for CSPA purposes.*

--Enforcement actions instituted by the Superintendent under the Mortgage Brokers/Loan Officers Law, and their final dispositions;

--Suspensions, revocations, or refusals to issue or renew certificates of registration and licenses under the Mortgage Brokers/Loan Officers Law;

--Outreach efforts of the Office of Consumer Affairs to provide education regarding predatory lending, borrowing, and related financial topics.

The bill specifies that the information the Superintendent must report does not include information that is privileged and confidential under the Mortgage Brokers/Loan Officers Law.

HISTORY

ACTION	DATE
Introduced	09-22-05
Reported, S. Finance & Financial Institutions	02-22-06
Passed Senate (29-4)	02-22-06

s0185-ps-126.doc/kl

