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(As Reported by H. Financial Institutions, Real Estate and Securities)

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

BILL SUMMARY

- Establishes new consumer protections relative to certain mortgage loans and provides a consumer who is harmed by a violation of these provisions with all the rights, actions and remedies available under the CSPA.
- Requires the Attorney General to publish a "Home Buyers Bill of Rights."
- Prohibits a supplier from committing an unfair or deceptive act or practice in connection with a consumer transaction between a loan officer, mortgage broker or nonbank mortgage lender and their customers.
- Revises law with respect to the prepayment penalties that are permitted on first or second lien mortgage transactions and prohibits the financing of insurance and "flipping," defined as making a consumer home loan that refinances an existing consumer home loan when the new loan does not have a reasonable, tangible net benefit to the borrower.
- Revises the definition of "covered loan" as it applies to the Consumer Credit Mortgage Loan Act and removes a current law prohibiting the refinancing of a zero interest rate or other low rate loan made by a government or nonprofit lender.

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

- Requires pre-licensing education for mortgage brokers.
- Creates the Consumer Finance Education Board.
- 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.

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CONTENT AND OPERATION

Consumer protections relative to mortgage loans

(R.C. 1349.38 and 1349.42)

The bill establishes a separate definition of "consumer transaction" as it specifically applies to loan transactions between a loan officer, mortgage broker or nonbank mortgage lender and their customers, and prohibits these suppliers from committing unfair or deceptive acts or practices as defined in the bill (R.C. 1349.38--see below).

A consumer who is harmed by a violation, or by any of the other prohibited acts listed below, is given all the rights, actions, and remedies available under the Consumer Sales Practices Act.



Definitions

(R.C. 1349.25)

The bill establishes the following new definitions with respect to home loans by mortgage transactions:

"Consumer transaction" means a loan transaction between a loan officer, mortgage broker, or nonbank mortgage lender and their customers.

"Consumer home loan" means a loan in which the borrower is a natural person, the debt is incurred by the borrower primarily for personal, family, or household purposes, and the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

"Supplier" means a loan officer, mortgage broker, or nonbank mortgage lender but does not include any transferee, assignee, or holder of any consumer transaction.

"Enforcement actions" means administrative and judicial actions that are in the public record.

"Knowledge" means actual awareness. Actual awareness may be inferred where objective manifestations indicate that the individual involved acted with such awareness.

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 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.

Unfair or deceptive act or practice

(R.C. 1349.38 and 1349.39)

The bill establishes a specific list of practices that are unfair or deceptive acts, and provides the Superintendent of Financial Institutions, in consultation with the Attorney General, the authority to adopt, amend, and repeal substantive rules defining with reasonable specificity acts or practices that are violations of law.

Other prohibited mortgage loan actions

(R.C. 1321.57 and 1349.41)

Prepayment penalties

The bill prohibits prepayment penalties or fees with respect to first mortgage home loans made by a nonbank mortgage lender in which the principal amount is \$150,000 or less when the loan is for personal, family or household purposes and is secured by a first mortgage. On loans of a greater amount, a prepayment penalty of 2% in the first year and 1% in the second year is permitted. No prepayment penalty will be permitted thereafter.

The bill also limits the prepayment penalty for second mortgage loans by revising current law to decrease the time during which a penalty may be charged from three to two years, with a 2% limit the first year and 1% limit the second year after the loan contract is executed.

Financing insurance

The bill prohibits a lender, in a consumer home loan, from financing directly or indirectly any credit, life, disability, or unemployment insurance or any health or life insurance premiums. Insurance premiums calculated and paid on a monthly basis may not be considered financed by the lender.

Flipping

The bill prohibits "flipping," defined as making a consumer home loan that refinances an existing consumer home loan when the new loan does not have a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

Covered loans

(R.C. 1349.25 and 1349.27(J))

Existing Ohio law, by reference, includes the federal definition of "covered loan" from the federal Home Owner Equity Protection Act. The bill revises the definition to read as follows:

"**Covered loan**" means a consumer credit mortgage loan transaction that meets all of the following criteria:

- (1) The loan involves property located within this state.



(2) The loan is considered a mortgage under section 152(a) of the "Home Ownership and Equity Protection Act of 1994," 108 Stat. 2190, 15 U.S.C.A. 1602(aa), as amended.

(3) The loan is related to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(a) The annual percentage rate at consummation exceeds by more than eight percentage points for first-lien loans, or by more than ten percentage points for subordinate-lien loans, the yield on treasury securities having comparable periods of maturity to the loan maturity as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

(b) The total points and fees payable by the consumer at or before loan closing exceed the greater of 5% of the total loan amount, or \$528; the \$528 amount shall be adjusted annually on the first day of January by the superintendent of financial institutions based on the annual percentage change in the consumer price index that was reported on the preceding first day of June.

The bill also removes the current law provision that prohibits a creditor from replacing or consolidating a zero interest rate or other low rate loan made by a governmental or nonprofit lender, with a covered loan.

Assignee liability

(R.C. 1349.409)

The bill bars any claim or defense from being asserted by the Attorney General or any consumer against an assignee or purchaser of a mortgage loan for value unless the violation is committed by the assignee or purchaser before such assignment or purchase or the assignee or purchaser is affiliated by common control with the seller of the loan at the time of such assignment or purchase and the loan was in default at the time of such assignment or purchase, which for the purposes of this prohibition means at least 30 days past due.

Right of rescission

(R.C. 1349.42)

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.¹

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."² 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.³ 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.

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

¹ 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.

² For the definitions of these terms, see R.C. 4763.01.

³ A violation of this prohibition is a misdemeanor of the first degree (R.C. 4763.99).

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 real estate appraiser from knowingly bribing, coercing, or extorting a person for the purpose of corrupting or improperly influencing the independent judgment of a real estate appraiser. A violation of this provision is a fifth degree felony, as in the Senate bill.

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.⁴

Also, the bill requires a mortgage broker to deliver "immediately" a copy of any credit score and report obtained regarding the buyer by the registrant for the purpose of the mortgage loan application. Also, if the loan officer or registrant uses an automated valuation model to determine an appraisal report, the registrant shall also include a copy of the automated valuation model report. The MLODS also must indicate whether insurance payments will be escrowed (R.C. 1322.062).

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.

Pre-licensing education for mortgage brokers

(R.C. 1322.03 and 1322.031)

The bill requires any person who applies for a mortgage broker certificate or loan officer license on or after January 1, 2007 to meet certain qualifying education requirements, which include 12 hours of classroom instruction in real estate finance and residential lending, 12 hours of classroom instruction that includes the subjects of Ohio real estate law, municipal, state, and federal civil rights law, new case law on foreclosure, residential mortgage lending, and methods of eliminating the effects of predatory and unsound lending practices, eight hours of classroom instruction in real estate appraisal that includes the subjects of the uniform standards of professional appraisal practice, and eight hours of classroom instruction in ethics that includes fiduciary duties, confidentiality and consumer counseling.

Consumer finance education board

(R.C. 3121.21)

Creates the consumer financial education board in the Department of Commerce. Among other things, the board will create a pilot program in financial

⁴ 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)).

literacy to be operated in the five Ohio counties having the highest foreclosure rates and to mandate the development of an education curriculum in financial literacy for elementary and secondary school students. Also, the bill creates a financial literacy and counseling program that will be mandatory for any consumer seeking a mortgage loan with origination fees greater than 5%, and is funded through the Department of Commerce consumer finance fund created under R.C. 3121.21.

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 if any fees payable to the broker or lender increase by more than 10% or \$100, whichever is greater. 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.

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.⁵

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.⁶

⁵ A buyer injured by a violation of this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

⁶ A buyer injured by a violation of this provision may bring an action for the recovery of damages (R.C. 1322.11(A)).

Influencing an appraiser's judgment (R.C. 1322.07 and 1322.99). The bill prohibits any mortgage broker or loan officer from knowingly bribing, coercing, or extorting a person for the purpose of corrupting or improperly influencing the independent judgment of a real estate appraiser. A violation of this provision is a fifth degree felony, as in the Senate bill.

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,⁷ from owning or controlling a majority interest in an appraisal company.⁸ 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 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 any settlement service provider, including any title insurance company, without providing the buyer with a written notice disclosing any business relationship that exists between the mortgage broker or loan officer and the company to which the buyer is being referred, any financial benefit that may be provided because of the relationship, and, if applicable, any ownership interest.

⁷ "Immediate family" means a spouse residing in the person's household and any dependent child (R.C. 1322.074(A)(1)).

⁸ "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)).

(2) Referring a buyer to an appraisal company if the mortgage broker or loan officer, or their immediate family, has certain financial relationships with the appraisal company.

Fiduciary duty

(R.C. 1322.081)

The bill stipulates that a mortgage broker or loan officer has a fiduciary duty with respect to any funds received from or on behalf of the buyer and must follow reasonable and lawful instructions from the buyer, act with reasonable skill, care, and diligence, and make reasonable efforts with lenders with whom the registrant or licensee regularly does business to secure a loan that is reasonably advantageous to the borrower. It also adds that, if a buyer is approved for more than one loan product by more than one lender, the registrant or licensee must present each option to the buyer.

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.

The bill authorizes the Superintendent to, without a hearing, require a registrant or licensee, or an applicant, in lieu of school transcripts, to provide a written statement that they have met the pre-license education requirements, and conduct an investigation of qualifying education transcripts, unannounced, at any registrant's or licensee's place of business. It also requires the Superintendent to suspend the certificate of registration or license of a registrant or licensee who has failed to meet the continuing education requirements of the Mortgage Broker/Loan Officer Law.

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

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 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.⁹ 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 non-confidential 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.

⁹ *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.*

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:

--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
Reported, H. Financial Institutions, Real Estate & Securities	---

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