



## *Bill Analysis*

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### **S.B. 275**

126th General Assembly  
(As Introduced)

**Sens. Stivers, Niehaus, Jordan**

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#### **BILL SUMMARY**

- Transfers enforcement authority for the Mortgage Brokers/Loan Officers Law from the Superintendent of Financial Institutions to the Attorney General.
- Makes other changes in the Mortgage Brokers/Loan Officers Law, including with respect to offenses that may disqualify an applicant, loan officer examination, continuing education requirements, disclosure of information, and prohibited acts.
- Requires the Superintendent of Financial Institutions to accept and address written complaints about depository institutions, mortgage brokers, and loan officers, and states that those complaints, as well as complaints about real estate appraisers, are public records after the final resolution or disposition of the complaint.
- Allows the Attorney General to investigate alleged violations of Ohio law relating to the extension of credit and to create predatory lending strike forces to investigate such alleged violations.
- Provides that the course requirements needed for high school students to graduate must include ten hours of personal economics instruction.
- Prohibits a creditor from providing a residential mortgage to a first-time buyer unless the buyer receives specified counseling or makes at least a 20% down payment.
- Creates a six-member Ohio Consumer Mortgage Commission to provide grants for consumer education in financial decision-making, mortgage borrowing, and predatory lending practices, and makes a \$5 million appropriation for Commission purposes.

- Prohibits the use of appraisals by nonlicensed appraisers in the residential mortgage approval process.
- Requires the Superintendent of Financial Institutions to adopt rules necessary to ensure Ohio chartered and licensed institution compliance with the federal Truth in Lending Act.
- Makes other changes with respect to residential mortgage lending.

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## **CONTENT AND OPERATION**

### **Overview**

The bill addresses issues related to "predatory lending." It transfers from the Superintendent of Financial Institutions to the Attorney General the direct authority to enforce the Mortgage Brokers/Loan Officers Law. It requires the Division of Financial Institutions and the Division of Real Estate to share with other state regulatory authorities confidential information regarding real estate brokers, real estate appraisers, mortgage brokers, and loan officers. It establishes the Ohio Consumer Mortgage Commission, and authorizes the Attorney General to create predatory lending strike forces. It prohibits residential mortgage appraisals except by licensed appraisers. And it makes numerous other changes with respect to residential mortgage lending.

The bill was drafted, however, prior to the enactment of Am. Sub. S.B. 185 of the 126th General Assembly, which also dealt with predatory lending. Consequently, when "current law" is referred to in this analysis, it means the law as it existed at the time the bill was drafted.

### **Mortgage Brokers/Loan Officers Law**

#### **Enforcement by Attorney General**

The bill transfers from the Superintendent of Financial Institutions to the Attorney General the direct authority to enforce the Mortgage Brokers/Loan Officers Law (R.C. 1322.01 to 1322.12). The Superintendent retains the authority to administer the Law, such as investigating applicants, issuing and renewing certificates and licenses, and approving the examinations and continuing education courses for operations managers and loan officers. (See, for example, R.C. 1322.04, 1322.041, 1322.051, and 1322.052.)

Generally, the Attorney General is given the authority to (1) examine the records of mortgage brokers, (2) investigate alleged violations of the Mortgage Brokers/Loan Officers Law or the rules adopted under the Law, (3) deliver to the

Superintendent an order to suspend, revoke, or refuse to issue or renew a certificate of registration or license if the Attorney General finds a violation of law or rule, (4) bring an action to enjoin a violation, (5) initiate criminal proceedings, (6) impose a fine for each day a violation is committed, and (7) issue cease and desist orders. (See R.C. 1322.06, 1322.072, 1322.10, and 1322.11.)

The bill requires the Attorney General, after notice and opportunity for a hearing, to deliver to the Superintendent a written order to suspend, revoke, or refuse to issue or renew a certificate of registration or license *if* the Attorney General finds that the registrant or licensee has been convicted of or pled guilty to 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. Additionally, the Superintendent is required to suspend, revoke, or refuse to issue or renew a certificate of registration or license if the registrant or licensee fails to comply with the continuing education requirements (see below). (R.C. 1322.10(F) and (G).)

Lastly, while the Superintendent retains the authority to adopt rules for the administration of the Mortgage Brokers/Loan Officers Law, the Attorney General is given the authority to adopt rules for the enforcement of the Law (R.C. 1322.12).

**Offenses and other conditions that may disqualify an applicant**

(R.C. 1322.04(A) and 1322.041(A))

Current law requires the Superintendent of Financial Institutions to issue a mortgage broker certificate of registration if the Superintendent finds, among other things, both of the following:

(1) That neither the applicant nor any shareholder, member, partner, operations manager, or employee of the applicant (a) 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 or (b) has been subject to any adverse judgment for conversion, embezzlement, misappropriation of funds, fraud, misfeasance or malfeasance, or breach of fiduciary duty. If the applicant or any of those other persons *has* pleaded guilty to or been convicted of any such offense or *has* been subject to such a judgment, the applicant is not disqualified *if* the applicant can prove to the Superintendent, by a preponderance of the evidence, that the applicant's or other person's activities and employment record since the conviction or judgment 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 or be subject to such a judgment again.

The bill removes this "opportunity"; consequently, a guilty plea or conviction, or an adverse judgment, outright disqualifies the applicant. This applies as well to an applicant for a loan officer's license.

(2) The applicant's financial responsibility, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly. A similar requirement applies to applicants for a loan officer's license. The bill removes these provisions.

Current law also requires the Superintendent to determine which partners, shareholders, or other persons must meet these conditions--based upon the extent of their ownership interest in the applicant. The bill removes this provision, thereby requiring all such persons to meet the conditions.

### **Loan officer examination**

(R.C. 1322.051)

Current 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. The bill makes the successful completion of the examination a condition of licensure.

### **Continuing education requirements**

(R.C. 1322.04(B)(2), 1322.041(B)(2), and 1322.052; Section 3)

Currently, each person designated to act as operations manager for a mortgage broker, and each loan officer, must annually complete six hours of continuing education. The bill increases the number of hours to eight. It also requires that at least four of those hours cover the obligations and requirements imposed on the person by the Mortgage Brokers/Loan Officers Law. These requirements take effect on the first day of the first calendar year after the bill's effective date.

### **Required disclosures**

(R.C. 1322.062 and 1322.063)

Under current law, a revised mortgage loan origination disclosure statement must be provided to the buyer no later than three days after a change in any of the information provided in the statement occurs, or the date the loan is closed, whichever is earlier. The bill instead requires that it be provided no later than 24 hours before the loan is closed. It also requires that a buyer be provided, within 24 hours before the loan is closed, a written statement outlining the type of loan, the

term of the loan, the interest rate, the annual percentage rate, the timing and amount of installment payments, and the amount to be placed in escrow. If there is any change in the information provided in the written statement, the mortgage broker must provide a revised statement no later than 24 hours before the loan is closed.

**Prohibited acts**

(R.C. 1322.07)

Mortgage brokers and loan officers are currently prohibited from making false or misleading statements of a material fact, omissions of statements required by state law, or false promises regarding a material fact, through advertising or other means. The bill specifies that this includes any violation of the Federal Trade Commission Act regarding unfair and deceptive acts or practices in the dissemination of false advertisements.

The bill also prohibits mortgage brokers and loan officers from:

(1) Accepting or receiving compensation for mortgage broker services when also receiving compensation for real estate broker services with respect to the same transaction; and

(2) Making any promises regarding the terms of a mortgage loan by any means other than in writing.

**Filing of written complaints; when a public record**

(R.C. 1121.022, 1155.012, 1163.021, 1322.064, 1733.328, and 4763.11)

Current law sets forth a procedure under which written complaints filed against a certified, registered, or licensed real estate appraiser are addressed by the Superintendent of Real Estate. In a similar manner, the bill requires the Superintendent of Financial Institutions to accept written complaints filed against any bank, savings and loan association, savings bank, mortgage broker, loan officer, or credit union (hereinafter referred to as "regulated entities"). The Superintendent is to review the complaint in detail, acknowledge its receipt in writing, and forward the complaint to a senior officer at the regulated entity's place of business. The Superintendent must request the regulated entity to respond directly to the complainant within 30 days, and to send a copy of its response to the Superintendent.

The bill states that these written complaints, including those filed against real estate appraisers, and the regulated entities' written responses, are a public record *after final resolution or disposition of the complaint*. It does not, however,

authorize the disclosure of information obtained in any examination, investigation, or audit conducted in accordance with current law, or the disclosure of information otherwise deemed privileged or confidential by law.

**Compensation of real estate brokers**

(R.C. 4735.64 and 4735.66)

Under the bill, real estate brokers are prohibited from accepting or receiving compensation for real estate broker services when also receiving compensation for mortgage broker services with respect to the same transaction.

**Sharing of confidential information among regulators**

**Mortgage broker and loan officer information**

(R.C. 1322.061(A), (C), and (D))

Current law provides that the confidentiality requirements of the Mortgage Brokers/Loan Officers Law do not prevent the Division of Financial Institutions from releasing information regarding mortgage brokers and loan officers to the Attorney General for purposes relating to the Attorney General's administration of the Consumer Sales Practices Act (R.C. Chapter 1345.). However, information so released remains privileged and confidential.

The bill requires that such information be made available to the Attorney General for purposes of the Attorney General's enforcement of the Mortgage Brokers/Loan Officers Law as well as the Consumer Sales Practices Act. Information concerning examinations and investigations remains privileged and confidential except in connection with criminal proceedings or an official action taken against a broker or loan officer.

The bill also requires the Superintendent of Financial Institutions or the Attorney General, upon request, to release or exchange with other financial institution regulatory authorities information relating to mortgage brokers and loan officers. For these purposes, "other financial institution regulatory authority" expressly includes a regulator of a business activity that is conducting an investigation of a mortgage broker or loan officer that falls under its jurisdiction and when the information to be released is relevant to the investigation.

**Real estate broker and appraiser information**

(R.C. 4735.05 and 4763.03)

The bill also requires the Division of Real Estate to release or exchange, with other state regulatory authorities upon their request, information relating to

real estate brokers and real estate appraisers. For this purpose, a "state regulatory authority" includes the Attorney General, a regulator of a business activity in which a real estate broker or appraiser is engaged or has applied to engage in (to the extent that the regulator has jurisdiction over a broker or appraiser engaged in that business activity), or a regulator of a business activity that is conducting an investigation of a broker or appraiser that falls under its jurisdiction and when the information to be released is relevant to the investigation. A real estate broker or appraiser is engaged in a business activity, and a regulator of that business activity has jurisdiction over the broker or appraiser, whether the broker or appraiser conducts the activity directly or a subsidiary or affiliate of the broker or appraiser conducts the activity.

**Predatory lending strike forces**

(R.C. 109.88)

The bill provides that if the Attorney General, as a result of a complaint or the Attorney General's own inquiry, has reason to believe that a lender has engaged, is engaging in, or is preparing to engage in a violation or failure of compliance with any Revised Code provision related to any extension of credit, or any violation or failure of compliance with the federal "Home Ownership Equity Protection Act of 1994" (HOEPA),<sup>1</sup> the Attorney General can investigate the alleged violation and can administer oaths, issue subpoenas, adduce evidence, and require the production of any relevant books, papers, or records.

The bill also allows the Attorney General to create a predatory lending strike force to conduct such an investigation that can focus on any financial institution or mortgage broker in any Ohio county and report the results to the Attorney General. The bill requires the Attorney General to appoint a strike force director to supervise any investigation. If the Attorney General establishes a strike force to investigate a criminal activity, the director must be a county sheriff or deputy sheriff or the chief law enforcement officer or a member of a law enforcement agency of an Ohio municipal corporation or township. However, if the Attorney General establishes the strike force to investigate a non-criminal activity, the director must be an employee of the state agency that licenses, registers, or regulates the institution under investigation. A person cannot be appointed a strike force director without his or her consent. In addition, where applicable, the person's employer must consent to the appointment.

Upon appointment of a strike force director, the bill requires the Attorney General to meet with the director and establish the investigation's scope and limits

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<sup>1</sup> 15 U.S.C.A. 1602 et seq., as amended.

and any staff appointments. The Attorney General can remove and replace an appointed director.

The bill expressly states that it does not provide a law enforcement official or government regulatory examiner the authority to commit an act, in the course of an investigation, that is not otherwise permitted by law. The Attorney General must evaluate any strike force report and take appropriate action or refer the matter to the appropriate county prosecuting attorney.

**Personal economics instruction for high school students**

(R.C. 3313.603(B); R.C. 3301.0726, not in the bill)

Current law requires high school students to successfully complete a minimum high school curriculum to receive a diploma. The minimum curriculum includes 20 units in grades 9 through 12, with a prescribed number of units in the areas of English language arts, health, math, physical education, science, social studies, and electives. The bill adds that, within the content of the courses included in the required 20 units, every high school student must complete at least ten cumulative hours of instruction in the area of personal economics, including instruction in financial planning, financial decision-making, and consumer credit. The bill allows a school district board of education or a nonpublic school curriculum planner, in developing the personal economics content, to use any part of the packet of high school instructional materials on personal financial responsibility developed by the Department of Education under current law.

**Creditor prohibition for first-time home buyers**

(R.C. 1349.53)

The bill prohibits a creditor<sup>2</sup> from providing a residential mortgage<sup>3</sup> for a first-time buyer's initial acquisition of real property unless: (1) the buyer produces

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<sup>2</sup> "Creditor" has the same meaning as in HOEPA (15 U.S.C.A. 1602(f)) and Federal Reserve Board regulations and generally refers to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit that is payable by written agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement.

<sup>3</sup> "Residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien on real property located within Ohio containing two or fewer residential units or on which two or fewer residential units will be constructed and includes such an obligation on a residential condominium or cooperative unit (R.C. 1343.011, not in the bill).

a down payment of not less than 20% of the property's total sale price, or (2) the buyer demonstrates that he or she has received at least eight hours of pre-purchase buyer counseling from a housing counseling agency approved by the United States Department of Housing and Urban Development.

### **Ohio Consumer Mortgage Commission**

(R.C. 1349.55; Section 4)

The bill creates the Ohio Consumer Mortgage Commission, under the Office of the Attorney General, and requires it to provide, supervise, and coordinate financial grants for consumer education programs in financial decision-making, mortgage borrowing, and predatory lending practices. The Commission must meet at least quarterly, and at other times when called by the chairperson or at the Attorney General's request.

The Commission consists of six members appointed with the advice and consent of the Senate. The Governor, the President of the Senate, and the Speaker of the House of Representatives must each appoint two members. Initial appointments must be made within 30 days after the bill's effective date. The Governor must appoint one member as Commission chairperson, who serves for a two-year term. The bill states that the Governor's other initial appointee serves for a one-year term. One initial appointee made by the President of the Senate and the Speaker of the House of Representatives serves for a two-year term and the other will serve for a one-year term. Upon the expiration of the initial terms, all terms are for two years, ending on the same day of the same month of the year as did the succeeding term. The bill specifies that a member appointed to fill a vacancy will hold office for the remainder of the predecessor's term. Also, a member remains in office until a successor takes office or until 60 days elapses after the member's term expires, whichever occurs first.

The bill prohibits a person who has been convicted of or pled guilty to a felony from being a Commission member. It further prohibits compensation of Commission members, except for expenses incurred in the performance of their duties. The bill appropriates \$5 million from the General Revenue Fund for the fiscal year 2006-2007 biennium for Commission purposes.

### **Licenses for real estate appraisers**

(R.C. 4763.13)

Current law provides procedures for certifying "state-certified general real estate appraisers" and "state-certified residential real estate appraisers" and for licensing "state-licensed residential real estate appraisers." However, nothing precludes a person who is not licensed or certified from appraising real estate for

compensation. The bill prohibits any person from providing a real estate appraisal that will be used in the approval process for a residential mortgage unless the person is licensed under the Real Estate Appraisers Law. For the purposes of this provision, "residential mortgage" has the same meaning as above under "**Creditor prohibition for first-time home buyers.**"

**Compliance with the Truth in Lending Act**

(R.C. 1181.081)

The bill requires the Superintendent of Financial Institutions to adopt rules necessary to ensure that Ohio chartered and licensed institutions comply with the requirements of the federal Truth in Lending Act (15 U.S.C.A. 1601 et seq.).

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**HISTORY**

ACTION	DATE
Introduced	02-23-06

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