Ohio Legislative Service Commission

Bill Analysis

Monica Baker

H.B. 322

129th General Assembly

(As Reported by H. Financial Institutions, Housing and Urban Development)

Reps. Brenner, Kozlowski, Henne, Combs, Wachtmann, Stebelton

BILL SUMMARY

- Permits Ohio-chartered banks, savings banks, savings and loan associations, and credit unions to charge the same interest, fees, and other charges that respective out-of-state financial institutions may charge Ohio customers.

CONTENT AND OPERATION

Competitive equality

The bill allows Ohio-chartered banks, savings banks, savings and loan associations, and credit unions to charge the same interest, fees, and other charges that the respective out-of-state financial institutions may charge Ohio customers. The bill also specifies that these Ohio-chartered institutions are not subject to Ohio laws limiting interest, fees, and other charges.[1]

Background and current law

Ohio laws limiting interest, fees, and other charges

Current law provides various limitations regarding interest, fees, and other charges that may be imposed on consumers. Those limitations include, for example, civil usury, criminal usury, consumer protection laws such as the Ohio's Consumer Sales Practices Act, and limitations on interest and finance charges.[2]

Financial institutions not subject to Ohio laws

Because of two doctrines culled from federal law, certain financial institutions are already exempt from Ohio laws limiting interest, fees, and other charges. Under the "Most Favored Lender" and "Exportation" doctrines, federally chartered financial

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[1] R.C. 1121.051, 1155.181, 1163.221, and 1733.413.

[2] R.C. 1109.20, 1343.01, 1345.031, and 2905.21 to 2905.24 (not in the bill).

institutions and federally insured state-chartered financial institutions, whether they are headquartered in Ohio or another state, are not subject to Ohio laws limiting interest, fees, and other charges (**COMMENT** 1). In fact, under the Most Favored Lender doctrine, Ohio-chartered financial institutions, because they are federally insured, appear to already be exempted from Ohio law governing interest limitations (**COMMENT** 2). Ohio-chartered banks, savings banks, and savings and loans are required to be federally insured in order to do business.[3] Ohio credit unions must be insured by the National Credit Union Administration (federal insurance), a credit union guaranty corporation, or an insurer qualified under Ohio law.[4] Despite this, most federally insured Ohio-chartered financial institutions, according to the Department of Financial Institutions, do not impose interest in excess of the requirements imposed under Ohio law.

Most favored lender extension statutes

In some states in which financial institutions are at a competitive disadvantage because of the Most Favored Lender and Exportation doctrines, legislation has been enacted allowing the state-chartered financial institutions to charge the same rates that out-of-state financial institutions may charge customers (**COMMENT** 3).

Parity statutes

Although enacted to combat the competitive advantages granted to national banks through their "incidental banking powers" under the federal National Bank Act, parity statutes have been used to even the playing field with other out-of-state financial institutions. All 50 states have enacted parity statutes. Ohio's parity laws require the Superintendent of Financial Institutions to adopt rules granting Ohio-chartered financial institutions any right, power, privilege, or benefit possessed under statute, rule, regulation, interpretation, or judicial decision, by a variety of financial institutions. The Superintendent could grant Ohio-chartered financial institutions the ability to charge the same rates of interest as out-of-state financial institutions.[5]

COMMENT

1. **Most Favored Lender and Exportation doctrines.** The Most Favored Lender Doctrine is a federal preemption standard. It allows, for example, a national bank domiciled in Indiana, or a bank chartered under Indiana's banking laws, to charge its customers the most favorable interest rates provided for any type of lender under Indiana law. Under this doctrine, federally chartered financial institutions and

[3] R.C. 1109.03, 1151.09, 1151.41, and 1161.02 (not in the bill).

[4] R.C. 1733.041 (not in the bill).

[5] R.C. 1121.05, 1151.18, 1163.22, and 1733.412 (not in the bill).

federally insured state-chartered financial institutions have three options for charging interest: (1) the alternative rate – which is a rate that is not more than 1% over the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District where the financial institution is located, (2) the most favored rate – the highest rate permitted to any lender under the financial institution's home state law, or (3) the rate permitted to the financial institution under the home state's law. The "Exportation Doctrine" further allows those financial institutions, when making loans or extending credit in another state, such as Ohio, to export that most favorable rate to their Ohio customers, without regard to any Ohio limitations on interest rates.[6]

2. **Ohio's Most Favored Lender rate is unlimited.** The Sixth Circuit Federal Court of Appeals has held, in a case addressing a national bank, that Ohio's most favored lender rate is unlimited.[7] In that case, the court specifically found, after reviewing Ohio law governing savings and loan associations and savings banks, that since their interest rates were unlimited, that was the most favored rate under the doctrine.[8] Despite the holding, national banks located in Ohio and other federally insured Ohio-chartered financial institutions have been reluctant to trust its efficacy and thus do not feel they can legally excede Ohio's statutory interest limits for the specific type of institution.

3. A Louisiana statute that includes language similar to that used in the bill specifically incorporates the Most Favored Lender Doctrine.[9] Tennessee, Virginia, and West Virginia have also enacted legislation permitting state-chartered banks to use the doctrine.[10]

HISTORY

ACTION	DATE
Introduced	09-13-11
Reported, H. Financial Institutions, Housing and Urban Development	03-22-12

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[6] 12 U.S.C. 85; 12 U.S.C. 1463(g); 12 U.S.C. 1785(g); 12 U.S.C. 1831d(a); *Tiffany v. National Bank of Missouri*, 85 U.S. 409 (1873); *Marquette Nat'l Bank v. Omaha Serv. Corp.*, 439 U.S. 299 (1978); *Greenwood Trust v. Commonwealth of Massachusetts*, 971 F.2d 818 (1st Cir.), cert. Denied, 506 U.S. 1052 (1993).

[7] *Begala v. PNC Bank, Ohio N.A.*, 214 F.3d 776, 782 and 783 (2000) (6th Cir.).

[8] R.C. 1151.21 and 1161.28 (not in the bill).

[9] La. Rev. Stat. Ann. 6:548(B) (2011).

[10] Tenn. Code Ann. 45-2-1108 (2011); Va. Code Ann. 6.2-805 (2011); and W.Va. Code Ann. 31A-4-30a(3) (2011).