



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 333

129th General Assembly

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

**Sens.** Obhof, Beagle, Coley, LaRose, Seitz, Bacon, Peterson, Brown, Balderson, Burke, Hughes, Jones, Lehner, Manning, Wagoner, Widener

**Rep.** Brenner

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## BILL SUMMARY

- Permits the Superintendent of Financial Institutions to issue two types of temporary licenses – a temporary loan originator license and a temporary mortgage loan originator license.
- Permits an out-of-state loan originator to be issued a temporary loan originator license and, similarly, an out-of-state mortgage loan originator to be issued a temporary mortgage loan originator license.
- Enables a temporary licensee to engage in the loan origination business for which the licensee holds the temporary license while the licensee completes the requirements necessary to obtain the appropriate annual license.
- Requires that a licensee have a sponsor who meets certain criteria, employs or is associated with the licensee, and covers the licensee under its corporate surety bond during the term of the temporary license or requires the licensee to obtain and maintain such a bond.
- Creates identical processes by which each license may be issued.
- Requires the Superintendent to adopt rules to issue a temporary license to a registered loan originator or registered mortgage loan originator, as appropriate, upon modification of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" allowing states to do so.
- Permits the Superintendent to adopt rules in accordance with the Administrative Procedures Act necessary for the implementation and operation of the temporary

loan originator and temporary mortgage loan originator license provisions of the bill.

- Requires any credit exposure arising from a derivative transaction to be included in the calculation of a bank's total outstanding loans and extensions of credit to a person for the purpose of the lending limits imposed under current law.
- Adds limited liability companies to the definition of "person" for the purpose of the lending limits law.
- Permits the Superintendent to adopt rules (1) relating to credit exposure arising from derivative transactions, and (2) that expand or limit the definition of "person" used for the purposes of the lending limits law.
- Makes a remittance transfer (fund transfer to a recipient in a foreign country), as defined in the federal "Electronic Fund Transfer Act" (EFTA), subject to the portion of Ohio's version of the Uniform Commercial Code (UCC) governing funds transfers, unless the remittance transfer is also an electronic fund transfer under the EFTA.
- Specifies that in the event of an inconsistency between Ohio's UCC and the EFTA regarding a funds transfer, the EFTA is to govern to the extent of the inconsistency.

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## **CONTENT AND OPERATION**

### **Temporary loan originator and mortgage loan originator licenses**

The bill permits the Superintendent of Financial Institutions to issue two types of temporary licenses – a temporary loan originator license and a temporary mortgage loan originator license. An applicant must meet certain criteria to receive a temporary license. Upon obtaining a license, the temporary licensee would be able to engage in the business for which the licensee holds the temporary license while the licensee completes the requirements necessary under current law to obtain the respective annual license. The bill creates identical processes by which each temporary license may be issued.

## Who is eligible for temporary licensure

The bill permits only (1) an out-of-state loan originator to be issued a temporary loan originator license, and (2) an out-of-state mortgage loan originator to be issued a temporary mortgage loan originator license.<sup>1</sup>

An "out-of-state loan originator" or "out-of-state mortgage loan originator" is an individual who (1) holds a valid loan originator license, or mortgage loan originator license, respectively, or comparable authority, issued pursuant to the law of any other state of the United States, and (2) is registered, fingerprinted, and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.<sup>2</sup>

## Application requirements

The bill requires that an application for each type of temporary license to be in writing, made under oath, in a form that meets the requirements of the Nationwide Mortgage Licensing System and Registry, and include payment of a nonrefundable application fee, the amount of which is to be established by the Superintendent in rule. The application must also include a certification that, as of the date of application, the applicant meets the following conditions:

(1) The applicant has at least two years of experience in the field of residential mortgage lending in the five years immediately preceding the date of application for the temporary mortgage loan originator license or temporary loan originator license, as applicable.

(2) The applicant has not previously applied for a temporary mortgage loan originator license or temporary loan originator license, as applicable, in Ohio.

(3) That the applicant has not had a loan originator license or mortgage loan originator license, as applicable, or comparable authority, revoked in any governmental jurisdiction – the bill specifies that a subsequent formal vacation of such a revocation is not to be considered a revocation;

(4) That the applicant has not been convicted of, or pleaded guilty or nolo contendere to, either of the following in a domestic, foreign, or military court: (a) during the seven-year period immediately preceding the date of application, a misdemeanor involving theft or any felony, or (b) at any time prior to the date of

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<sup>1</sup> R.C. 1321.537(B) (temporary mortgage loan originator license) and 1322.402(B) (temporary loan originator license).

<sup>2</sup> R.C. 1321.537(A)(1) and 1322.042(A)(1).

application, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering. For the purposes of (4), the bill specifies that any conviction for which the applicant has received a pardon is not to be considered a conviction.<sup>3</sup>

### **Issuance of temporary license**

The bill requires the Superintendent to issue a temporary license to an applicant if the Superintendent finds that all of the following conditions are met:

(1) The application is accompanied by the application fee and the additional certification regarding experience, prior application, license revocation, and criminal history;

(2) The applicant is registered, fingerprinted, and has a valid unique identifier through the Nationwide Mortgage Licensing System and Registry as of the date of application;

(3) The applicant has authorized the Nationwide Mortgage Licensing System and Registry to obtain a credit report for submission to the Superintendent;

(4) The applicant has a sponsor that certifies employment of, or association with, the applicant and has signed the application (see "**Sponsorship**" below).<sup>4</sup>

Upon obtaining a temporary license, the licensee would be able to engage in the business for which the licensee holds the temporary license while the licensee completes the requirements necessary under current law to obtain a loan originator or mortgage loan originator license, as applicable. A temporary license is valid for a term of not more than 120 days from the date of issuance. A temporary license may not be renewed.<sup>5</sup>

### **Sponsorship**

The bill gives the sponsor of a temporary licensee the affirmative duty to supervise the conduct of each temporary licensee in the same manner as is required of its other licensees. The sponsor must either be registered with the Division of Financial Institutions in accordance with current law or be one of the entities exempted from compliance with the Second Mortgage Loan Law and the Mortgage Broker Registration Law.

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<sup>3</sup> R.C. 1321.537(C) and 1322.042(C).

<sup>4</sup> R.C. 1321.537(D) and 1322.042(D).

<sup>5</sup> R.C. 1321.52(E)(3), 1321.537(B), 1322.02(B)(3), and 1322.042(B).

The sponsor must either employ or be associated with the temporary licensee and, during the term of the license, cover the licensee under its corporate surety bond or require the applicant to obtain and maintain such a bond. If the temporary licensee's employment or association with the sponsor is terminated, the sponsor must notify the Division of Financial Institutions of the termination through the Nationwide Mortgage Licensing System and Registry. Upon the Division's receipt of the notice, the sponsor is no longer to be held responsible for the conduct of the temporary licensee.<sup>6</sup>

### **Registered originators**

The bill requires the Superintendent to adopt necessary and appropriate rules to issue a temporary license to a registered loan originator or registered mortgage loan originator if the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" is modified after the bill's effective date, or any regulation, statement, or position is adopted under the Act, to permit states to issue a temporary license to a registered loan originator or registered mortgage loan originator. The rules must be adopted in accordance with section 111.15 of the Revised Code.<sup>7</sup>

A "registered loan originator" or "registered mortgage loan originator" is an individual who is (1) a loan originator or mortgage loan originator, respectively, and is employed by a depository institution, a subsidiary of a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration, and (2) registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.<sup>8</sup>

### **Rule-making authority**

The bill permits the Superintendent of Financial Institutions to adopt rules in accordance with the Administrative Procedures Act necessary for the implementation and operation of the temporary loan originator and temporary mortgage loan originator license provisions.<sup>9</sup>

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<sup>6</sup> R.C. 1321.53(D) (not in the bill), 1321.537(A)(2) and (E), 1322.01(G)(2) (not in the bill), and 1322.042(A)(2) and (E).

<sup>7</sup> R.C. 1321.538 and 1322.043.

<sup>8</sup> R.C. 1321.51(S) (not in the bill) and 1322.01(I) (not in the bill).

<sup>9</sup> R.C. 1321.537(F) and 1322.042(F).

## Bank lending limits

### Derivative transactions

The bill adds credit exposure to a person arising from a derivative transaction between the person and a bank to the list of what is included as loans and extensions of credit for the purpose of the lending limits imposed under current law. The bill defines "derivative transaction" to include any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.<sup>10</sup>

Currently, the following are included as loans and extensions of credit for the purpose of the lending limits:

(1) All direct or indirect advances of funds made on the basis of any obligation of a person to repay the funds or repayable from specific property pledged by or on behalf of the person;

(2) To the extent specified by the Superintendent of Financial Institutions, any liability of a bank to advance funds to or on behalf of a person pursuant to a contractual commitment.

The lending limit for total outstanding loans and extensions of credit by a bank to a person that are not fully secured must not exceed 15% of the unimpaired capital of the bank. The lending limit for total outstanding loans and extensions of credit by a bank to a person that *are* fully secured is 10% of the unimpaired capital of the bank.<sup>11</sup>

### Definition of "person"

The bill expands the current definition of "person" used for the purposes of the lending limits to include limited liability companies. Currently, "person" includes an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; government; agency, instrumentality, or political subdivision of a government; or any similar entity or organization.<sup>12</sup>

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<sup>10</sup> R.C. 1109.22(A)(1) and (2) and (B).

<sup>11</sup> R.C. 1109.22(A)(2) and (B).

<sup>12</sup> R.C. 1109.22(A)(3).

## **Rule-making authority**

The bill also permits the Superintendent to adopt rules (1) relating to credit exposure arising from derivative transactions, and (2) expanding or limiting the definition of "person" used for the purposes of the lending limits.<sup>13</sup>

## **Remittance transfers**

The bill makes a remittance transfer as defined under the federal "Electronic Fund Transfer Act" (EFTA) subject to the portion of Ohio's version of the Uniform Commercial Code (UCC) governing funds transfers, unless the remittance transfer is also an electronic fund transfer under the EFTA.

### **What is a remittance transfer?**

The EFTA defines "remittance transfer" to mean the electronic transfer of funds (1) requested by a sender located in any state to a recipient who is located in a foreign country, and (2) that is initiated by a person of financial institution in the business of making such transfers to persons in a foreign country, whether or not the sender holds an account with the person or financial institution or whether or not the remittance transfer is also an electronic fund transfer. A remittance transfer does not include certain small-value transactions.<sup>14</sup>

### **What is an electronic fund transfer?**

The EFTA defines "electronic fund transfer" to mean, with certain exceptions provided in the EFTA any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account, including point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone.<sup>15</sup>

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<sup>13</sup> R.C. 1109.22(G)(1)(a) and (c).

<sup>14</sup> 15 U.S.C. 1693o-1(g)(1) and (2).

<sup>15</sup> 15 U.S.C. 1693a(7).

## Funds transfers

The bill specifies that the EFTA is to govern a funds transfer that is otherwise subject to Ohio's UCC in the event there is an inconsistency between the two laws. The EFTA is to govern the funds transfer only to the extent of the inconsistency.<sup>16</sup>

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## HISTORY

ACTION	DATE
Introduced	04-24-12
Reported, S. Financial Institutions	05-16-12
Passed Senate (32-0)	05-22-12
Reported, H. Financial Institutions, Housing & Urban Development	11-29-12

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<sup>16</sup> R.C. 1304.55(C).

