



# Ohio Legislative Service Commission

Jason Phillips

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## Fiscal Note & Local Impact Statement

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**Bill:** [H.B. 322 of the 129th G.A.](#)

**Date:** March 15, 2012

**Status:** As Introduced

**Sponsor:** Rep. Brenner

**Local Impact Statement Procedure Required:** No

**Contents:** Permits Ohio financial institutions to charge the same interest rate and other charges that out-of-state financial institutions may charge Ohio customers

### State Fiscal Highlights

- The bill expressly permits Ohio financial institutions to charge the same interest rates and other charges that respective out-of-state financial institutions may charge Ohio customers. Since some states allow higher interest rates and other fees, this effectively allows Ohio-chartered financial institutions to charge rates and fees above Ohio's current statutory maximums.
- Allowing Ohio financial institutions to charge higher rates, in itself, would likely have little impact on receipts from the corporation franchise tax (CFT), which is assessed at 13 mills (1.3%) of a financial institution's net worth. CFT receipts are deposited into the GRF.
- There is no apparent direct fiscal effect on the Department of Commerce's Division of Financial Institutions.

### Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

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## Detailed Fiscal Analysis

### Overview

Currently, Ohio law limits bank and credit union loan interest and finance charges to an annual percentage rate (APR) of 25%. There is no limit on interest rates or finance charges in statute for savings banks and savings and loan associations. Rather, these latter two types of institutions may collect dues, fines, interest and premium on loans made, or other assessments as are provided for in their constitutions and bylaws. As is noted in the LSC bill analysis, federally chartered and federally insured, state-chartered financial institutions already appear to be exempt from Ohio laws limiting interest, fees, and other charges under the "Most Favored Lender" (MFL) and "Exportation" doctrines, both of which are derived from federal law.<sup>1</sup> Since there is no statutory limitation on the interest that savings banks or savings and loan associations may charge, the Sixth Circuit Federal Court of Appeals has held, in a case involving a national bank, that Ohio's MFL rate is unlimited.<sup>2</sup> Congress has also extended the MFL doctrine to state-chartered, federally-insured financial institutions.<sup>3</sup> However, the Division of Financial Institutions (DFI) in the Department of Commerce indicates that no banks have attempted to charge more than an APR of 25%. This is so because national banks located in Ohio and other federally-insured, Ohio-chartered financial institutions have been reluctant to trust the efficacy of the Sixth Circuit's holding and thus do not feel that they can legally exceed Ohio statutory interest limits.

### Fiscal effects

#### Division of financial institutions (Department of Commerce)

The bill allows Ohio 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. This authority is granted irrespective of any other Ohio laws limiting those rates or amounts. Effectively, the bill allows Ohio financial institutions to charge interest rates above Ohio's statutory maximums, since some states have laws that allow for financial institutions to collect higher interest rates and fees than permitted under Ohio law. While the bill resolves an issue of legal and regulatory ambiguity for some financial institutions, the changes do not appear to have any direct fiscal effect on the regulatory activities of the Division of Financial Institutions within the Department of Commerce.

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<sup>1</sup> These doctrines do not apply to 62 state-chartered credit unions that do not carry federal insurance. Instead, those 62 institutions, which comprise 36% of the state's 171 state-chartered credit unions, are insured either through a credit union share guaranty corporation or an insurer qualified under Ohio law.

<sup>2</sup> *Begala vs. PNC Bank, Ohio, N.A.*, 214 F.3d 776,782 and 783 (2000).

<sup>3</sup> 12 U.S.C. 1463(g), 1785(g), and 1831d.

## **Tax effects**

Ohio financial institutions other than credit unions are subject to a 13 mill (1.3%) corporation franchise tax (CFT), the tax base of which is net worth. Revenue from the CFT is deposited into the GRF. Allowing Ohio financial institutions to charge higher rates, in itself, would likely have little impact on CFT receipts, for several reasons. First, because an Ohio financial institution may charge higher rates does not mean that it will do so, due to the presence of market competition. Second, other factors may counteract the potential increase in financial institution revenue brought about by higher interest rates, which would limit the effect on the financial institution's net worth. For instance, if a financial institution was to charge higher rates as a result of the bill, its income may increase, depending on how well the loans perform. All else being equal, for a higher interest rate on a loan, net worth might increase after a few years. This is not guaranteed though. Increases in expenses may negate that increase in income, or other changes in bank liabilities may leave net worth unchanged. Tax planning may also help in not paying higher CFT. Finally, loan assets are just a part of a financial institution's total assets and the size of those other assets may be just as important in the calculation of the institution's net worth and thus, its CFT liability.

## **State and local government purchasing programs**

LSC also considered what impact the possibility of higher interest rates might have on state and local government purchasing programs, many of which allow for credit card purchases. Overall, LSC concluded that an allowance for higher interest rates would not impact the state or local governments, as government entities in Ohio are unlikely to carry balances on any credit cards that may be used. The state of Ohio participates in two credit card programs, one for fleet services (overseen by the Department of Administrative Services) and the other for general, small-dollar purchases of goods and services (overseen by the Office of Budget and Management). The state's two credit card programs provide rebates that incentivize prompt payment. The longer an obligation remains unpaid, the rebate percentage dwindles to zero. Certain local governments may also use credit cards or procurement cards, but their use is generally tied to having sufficient appropriations and cash to support the purchases.

## **Banking services provided to state and local governments**

Noninterest account fees and service charges are generally unregulated by federal and state banking laws. That is, both federal and state laws generally permit financial institutions to charge customers noninterest account fees and service charges in accordance with the terms and conditions established by the financial institution. This means that any costs paid by a state or local government entity for banking services or financial devices (i.e., credit cards) are governed through a contract entered into with the financial institution. In many cases, such contracts are awarded through competitive bidding procedures that also take into account the interest rate the financial institution will pay on deposits.