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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 38  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsor:** Rep. Hillyer

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## SUMMARY

### Commercial credit reports

- Requires a commercial credit reporting agency to provide a credit report to a business that is the subject of the report, when requested by a representative, at no greater cost than what is charged to third parties.
- Establishes a procedure through which such a business may dispute a statement on the report.

### Written notice to debtor

- Modifies an existing requirement that a person collecting on certain debts secured by residential real property send a written notice to the debtor.

### Residential Mortgage Lending Act

- Limits the existing definition of “mortgage servicer” to a person that services more than five mortgage loans.
- Eliminates the existing requirement that a mortgage lender, servicer, or broker maintain an office location in Ohio and instead requires the office to be located in any U.S. state.
- Requires a mortgage lender, servicer, or broker application to include the names and addresses of the owners, officers, or partners having control of the applicant.
- Permits the Superintendent of Financial Institutions to consider other experiences related to the business of residential mortgage lending that the Superintendent determines is sufficient to qualify as an operations manager to a registrant or entity that holds a valid letter of exemption.
- Establishes procedures a registrant must follow when the operations manager ceases to be the operations manager.

- Requires a registrant to cease operations if it is without an operations manager approved by the Superintendent for more than 180 days, unless authorized in writing by the Superintendent.
- Eliminates the existing requirement that a mortgage loan originator maintain and display a copy of a license at the office where the mortgage loan originator principally transacts business, if the mortgage loan originator is employed by a or associated with a person or entity holding a valid letter of exemption.

## General Loan Law

- Permits the Superintendent of Financial Institutions to require applicants or registrants under the General Loan Law to use the National Multistate Licensing System for registration and compliance of the General Loan Law.

## Personal checking account information

- Eliminates requirements that (1) a financial institution require a person opening a personal checking account to provide the financial institution specified identifying information and (2) a person that issues or prints a check, print on the check the date on which the checking account was opened.

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# DETAILED ANALYSIS

## Commercial credit reports

### Provide copy to subject of report

The bill addresses “**commercial credit reports**” by requiring a commercial credit reporting agency to provide a credit report to a business, when requested, at cost that is not more than what is charged to third parties. And the bill establishes procedures for a business to dispute a statement on the report that the business believes is inaccurate. “Commercial credit reports” are reports provided by a commercial credit reporting agency to a business for a legitimate business purpose, relating to the financial status or payment habits of a business. Under federal law, the Fair Credit Reporting Act (FCRA) provides a method in which consumers can dispute errors on their consumer credit reports, however, commercial credit reports are not covered under these provisions of the FCRA.<sup>1</sup>

A “**commercial credit reporting agency**” is a person or entity that regularly engages in the practice of compiling and maintaining commercial credit reports on a business operating in Ohio for the purpose of providing commercial credit reports and, for monetary fees, dues, or on

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<sup>1</sup> R.C. 1319.17(A)(2); 15 United States Code 1681 *et seq.*; and “40 years of Experience with the Fair Credit Reporting Act, An FTC Report with Summary of Interpretations,” Federal Trade Commission, July 2011, <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrrreport.pdf>, page 21 (accessed April 24, 2020).

a cooperative nonprofit basis, provides commercial credit reports on a business operating in Ohio to third parties. The term includes only persons and entities that maintain a database of commercial credit reports from which new commercial credit reports are produced.

The bill excludes the following from the requirements that apply to commercial credit reports:

1. A report prepared for commercial insurance underwriting, claims, or auditing purposes;
2. A report containing information related to transactions or experiences between the business that is the subject of the report and the person making the report;
3. An authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
4. Any report in which a person that has been requested by a third party to make a specific extension of credit directly or indirectly to the subject of the report conveys its decision with respect to that request.<sup>2</sup>

Under the bill, a commercial credit reporting agency – if requested by a business that is the subject of the commercial credit report – must provide the report to the business at no greater cost than what is charged to third parties. The report must be in the format routinely made available to third parties, and the credit reporting agency is allowed to protect the identity of the sources of information in the report.<sup>3</sup>

### **Disputed information**

If the business that is the subject of the report believes the report contains an inaccurate statement of fact, it may – within 30 days after receipt of the report – file with the agency a written summary identifying each inaccurate statement of fact and indicating the nature of its disagreement with the statement. The agency has 30 days from receipt of the summary to do either of the following at no cost to the business:

1. Delete the disputed statement of fact from the report and, thereafter, block any repeat reporting of that disputed statement unless its accuracy has been verified;
2. Include in the report a notice of the business's assertion that the statement of fact is inaccurate.<sup>4</sup>

### **Civil action**

The bill explicitly states that any violation of the bill's provisions regarding commercial credit reports does not provide a private right of action, including a class action. Therefore, the bill does not appear to provide any enforcement mechanism for these provisions.<sup>5</sup>

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<sup>2</sup> R.C. 1319.17(A)(2) to (4).

<sup>3</sup> R.C. 1319.17(B).

<sup>4</sup> R.C. 1319.17(C).

<sup>5</sup> R.C. 1319.17(D).

## Written notice to debtor

The bill makes a few changes to an existing law related to debt collecting. Existing law requires a person collecting a defaulted debt that is secured by second mortgage or a junior lien on the debtor's residential real property to send a written notice to the debtor with specified information relating to the loan and the debtor's right to legal representation and possible qualification for bankruptcy.

First, the bill changes when the notice must be sent out. Instead of requiring the notice to be sent out before a collection is attempted, the bill requires the notice to be sent to the debtor 30 days prior to the filing of a foreclosure action.

Second, the bill revises the type of debt that will trigger the notice requirement. Under the bill, the debt must be secured by a mortgage on the property that is not in the first mortgage position and the debt has either been accelerated or is in default in accordance with the terms set forth in the promissory note.

In addition, the bill permits the notice to be included on or accompany any other communication with the debtor.

Lastly, the bill clarifies how the owner of the debt can remedy an unintentional failure to comply with the notice requirement. Under existing law, unchanged by the bill, if the owner of the debt fails to comply with the notice requirement, the owner of the debt can have immunity from civil liability if the owner takes certain steps to remedy the error, including providing the debtor restitution for the error. Existing law does not define restitution. The bill adds a definition for "restitution" as either (1) a waiver of all fees, costs, or expenses proximately associated with the failure to provide the notice to the debtor, or (2) actual damages.<sup>6</sup>

## Ohio Residential Mortgage Lending Act

The bill makes several changes to the Ohio Residential Mortgage Lending Act (RMLA).

### Mortgage servicing

Under existing law, mortgage servicers in Ohio must obtain RMLA registration with the Superintendent of Financial Institutions. The bill limits the existing definition of "mortgage servicer" to a person that services more than five mortgage loans. Therefore, under the bill only a person servicing more than five mortgage loans will need to register under the RMLA.<sup>7</sup>

### Office location

The bill eliminates the existing requirement that a mortgage lender, servicer, or broker maintain an office location in Ohio and instead requires the office to be located in any U.S. state.<sup>8</sup>

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<sup>6</sup> R.C. 1349.72.

<sup>7</sup> R.C. 1322.01(AA).

<sup>8</sup> R.C. 1322.07(A)(2).

## Registration

The bill requires that an application for a mortgage lender, servicer, or broker registration under the RMLA include the names and addresses of the owners, officers, or partners having control of the applicant. This includes the name and address of any applicable sole proprietor or partner. In the case of a corporation, the application must include the name and address of each shareholder owning 5% or more of the corporation. And in case of any other entity, the application must include the name and address of any person that owns 5% or more of any entity that will transact business under the registration. In addition, the bill requires the applicant to provide the Superintendent any reasonable information the Superintendent requires.<sup>9</sup>

## Operations manager

Under continuing law, each registrant of an entity holding a valid letter of exemption under the RMLA must designate an operations manager, and the bill expands the authority that an individual operations manager may have. Under existing law, an operations manager is responsible for the management, supervision, and control of a particular location; the bill expands this authority to apply to a particular registrant. Consequently, only one operations manager is required if there is a main office and one or more branch offices.

Under existing law, unchanged by the bill, an operations manager to a registrant or entity that holds a valid letter of exemption under the RMLA must have three years of experience as a mortgage loan originator. The bill requires that this experience be generally in the residential mortgage and lending field, including experience as a mortgage loan originator, and the bill authorizes the Superintendent to consider other experience related to the business of residential mortgage lending that the Superintendent determines is sufficient.

The bill also establishes procedures a registrant must follow when the operations manager ceases to be the operations manager. If the person designated as the operations manager ceases to be the operations manager, then within 90 days another person must be designated as the operations manager and the Superintendent must be notified in writing within ten days of the new designation.

The registrant must cease operations if it is without an operations manager approved by the Superintendent for more than 180 days, unless otherwise authorized in writing by the Superintendent due to exigent circumstances.<sup>10</sup>

## License display

The bill eliminates the requirement that a mortgage loan originator maintain and display a copy of the license at the office where the mortgage loan originator principally transacts

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<sup>9</sup> R.C. 1322.09(A)(2).

<sup>10</sup> R.C. 1322.12.

business if the mortgage loan originator is employed by a or associated with a person or entity holding a valid letter of exemption.<sup>11</sup>

## Definitions

The bill defines “**transaction of business as a mortgage lender, mortgage servicer, or mortgage broker in this state**” to mean the provision or offering of mortgage lender, servicer, or broker services on a residential mortgage loan (1) for any resident or property in Ohio or (2) by a person who is physically located in Ohio but who regularly provides mortgage lender or broker services in, or for property located in, another state.<sup>12</sup>

In addition, the bill modifies the definition of “**residential mortgage loan**” by eliminating the requirement that the real estate be located in Ohio. In addition, instead of requiring the loan to be secured by a first or second lien holder secured creditor, requires it to be secured by a first lien holder or subordinate lien holder secured creditor.<sup>13</sup>

Lastly, the bill modifies the definition of “**loan processor or underwriter**” to mean an individual who, with respect to the origination of a residential mortgage loan and under the direction of or subject to the supervision of a mortgage loan originator (1) receives, collects, distributes, or analyzes information common for the processing or underwriting a residential mortgage loan, or (2) communicates with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent the communication does not include the offering or negotiation of loan rates or terms or counseling borrowers about the loan.<sup>14</sup>

## General Loan law

The bill authorizes the Superintendent of Financial Institutions to require applicants or registrants under the General Loan Law to use the National Multistate Licensing System (NMLS) for registration and compliance of the General Loan Law, including for the purposes of the application, renewal, fees, and surrender of license. The Superintendent can also require applicants or registrants to pay any applicable fee to the NMLS.<sup>15</sup>

## Personal checking account information

The bill eliminates a requirement that a financial institution require a person opening a personal checking account to provide the financial institution specified identifying information, such as a driver’s license. It also eliminates the requirement that every person that issues or

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<sup>11</sup> R.C. 1322.29(D).

<sup>12</sup> R.C. 1322.01(KK) and a conforming change in R.C. 1322.07(A)(1).

<sup>13</sup> R.C. 1322.01(HH).

<sup>14</sup> R.C. 1322.01(V).

<sup>15</sup> R.C. 1321.52(D).

prints checks for use with a checking account print the date on which the checking account was opened on the face of each check.<sup>16</sup>

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## HISTORY

Action	Date
Introduced	02-12-19
Reported, H. Financial Institutions	11-26-19
Passed House (91-1)	02-20-20

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<sup>16</sup> R.C. 1349.16, repealed, and a conforming change in R.C. 2913.11.