

Chairman Dever, Ranking Member Smith and members of the Committee,

In 2001, the Ohio 124th General Assembly passed Senate Bill 76. The bill required the licensing of mortgage broker companies and their loan officers. Mortgage Bankers who made loans in their own name, funded them and underwrote them, were exempt from licensing, but only to the extent of their agency approvals. Mortgage Bankers are lenders that actually own the loan. Mortgage Brokers act in a capacity of bringing a consumer and a lender together. They do not own the loan.

A Mortgage Banker that makes just one loan outside of their agency approval is required to license as a mortgage broker under section 1322 of the Ohio Revised Code (O.R.C.), even though they are not brokers.

Mortgage Bankers generally sell their loans in the secondary market, many times retaining the servicing of the loan. However, some mortgage bankers sell the loan to an aggregator that will also purchase the servicing.

Section 1321 of the O.R.C. is the licensing statute for those lenders that make loans in which they collect at least one payment and/or make second mortgages.

Mortgage Bankers, because they are actual lenders, not brokers, have always had the ability to service loans. Therefore, in the past, licensing under section 1321 was never required for exempt mortgage bankers that collected payments, unless they were licensing for the purpose of making second mortgages. However, over the years, some examiners have interpreted the statute differently, and said that if a lender does not sell the loan prior to the first payment being made, they must license under section 1321. Being someone that was involved in the crafting of S.B. 76, I can tell you that that was not the intent of the legislation. The intent of the requirement to license under 1321 when making first mortgages, was to create regulation for mortgage brokers that collected the first payment, therefore not acting solely as a broker that was merely bringing the consumer and the lender together in the making of a mortgage loan. This interpretation is especially troubling for those mortgage bankers that would normally sell their loans before the first payment is due, but due to an unforeseen delay in an aggregator purchasing the loan, may have to collect the first payment; and could then be considered to be engaging in unlicensed activity under some examiners interpretation of the statute.

Section 1321 is not only the section of the O.R.C. that covers those first mortgages where a broker collects the first payment, the statute also covers the making of 2nd mortgage liens, and other types of loans secured by collateral other than residential real estate and unsecured loans.

In 2009, the S.A.F.E Mortgage Licensing Act of 2008 went into effect. This federal legislation required all loan officers working for non-depository institutions to be licensed. Since enactment of that legislation the Department of Commerce Division of Financial Institutions finds themselves in a position of having enforcement authority over loan officers, but not the companies they work for, when a loan officer works for an exempt mortgage banker. However, since the S.A.F.E Act, exempt mortgage bankers are subject to examinations by the state because the state has the authority to examine their loan officers.

House Bill 199 accomplishes the following:

- Moves all loans secured by residential real estate, both first and second lien, to section 1322 of the O.R.C.;
- Leaves section 1321 of the O.R.C. as the statute for unsecured loans and loans secured by collateral other than residential real estate; and
- Eliminates the mortgage banker exemption, requiring all non-depository lenders to be licensed.

Is it not the intention of this legislation to add or reduce regulation to those lenders that make unsecured loans or loans secured by collateral other than residential real estate under section 1321 of the O.R.C., but merely to move all mortgage lending into one statute, requiring one license; so as to avoid confusion, provide greater clarity, and eliminate the possibility of licensing under the wrong statute.

We also believe that since the Department of Financial Institutions has the right to examine exempt lenders, because it is part of the process when examining their loan officers, there is no longer a reason to have an exemption for mortgage bankers. Having an exemption that is limited to the lender's agency approval is risky for lenders because there is always the possibility of unknowingly engaging in unlicensed activity. Eliminating the mortgage banker exemption, and requiring all non-depositories to license, removes the possibility of a lender unknowingly engaging in unlicensed activity. It also eliminates the question of how much

enforcement authority does the Department have over lenders that are exempt from company licensing, even though they license the loan officers employed by those lenders. The members of the Ohio Mortgage Bankers Association are not opposed to doing away with the exemption, and actually welcome the clarity that comes with this legislation, creating one set of regulations for all non-depository lenders.

No changes were made to consumer protections within the legislation. However, it is our belief that consumer protection will be expanded with the elimination of the mortgage banker exemption.

It is our belief that the statute needs to be updated, in order to modernize and create less confusion for the lending industry, the Division of Financial Institutions and the consumer.