



Ohio Legislative Service Commission 122nd House Bill Analysis

Am. Sub. H.B. 522

122nd General Assembly
(As Passed by the House)

Reps. Schuler, Garcia, Mottley, Miller, Salerno, Verich, Wilson, Householder, Haines, Myers, Terwilleger, Reid, Mottl, Kasputis, Perz, James, Core, Padgett, Olman, Buchy, Wachtmann

- Specifies requirements that apply to the origination of mortgage loans.
- Modifies the registration requirements for mortgage brokers relative to the permissible location of a mortgage broker business, types of entities that may be registered, and the education and experience requirements of mortgage brokers.
- Eliminates late renewal of a mortgage broker's registration.
- Requires a mortgage broker to notify the Superintendent of Financial Institutions of changes in the management of a mortgage broker location.
- Requires, instead of net worth requirements, that a mortgage broker maintain a corporate surety bond.
- Specifies fines that the Superintendent may impose for a violation of the Mortgage Broker Law or a rule.
- Redefines mortgage bankers for purposes of their exemption from the Mortgage Broker Law.
- Eliminates certain attestation provisions applicable to annual and semiannual financial reports of Ohio-chartered savings and loan associations and savings banks and eliminates certain publication requirements of financial information by those institutions.

CONTENT AND OPERATION

Overview

Generally, the bill makes several changes to the Mortgage Broker Law (Chapter 1322.) by specifying requirements that apply to the origination of mortgage loans; modifying the registration requirements of mortgage brokers, including the location, types of entities, and education or experience requirements; replacing net worth requirements of mortgage brokers with surety bond requirements; modifying the administrative penalties that may be imposed by the Superintendent of Financial Institutions for a violation of the Mortgage Broker Law; and redefining mortgage bankers for purposes of their exemption from the Mortgage Broker Law.

The bill also makes changes to the Savings and Loan Association Law and the Savings Bank Law (Chapters 1155. and 1163.) to eliminate certain attestation provisions applicable to annual and semiannual financial reports filed with the Superintendent of Financial Institutions by savings and loan associations and savings banks and to eliminate certain publication requirements of financial information by those institutions.

MORTGAGE BROKER LAW

Origination of a mortgage loan

(sec. 1322.02(B), (C), and (D))

The bill prohibits a registrant or an employee from originating a mortgage loan, unless the loan is originated at a location where the registrant's certificate of registration is maintained and where the registrant or the employee of the registrant

regularly transacts mortgage broker business. The bill also prohibits a person from originating a mortgage loan, unless that person is an employee of the registrant.

Under the bill, "originate" means any of the following: (1) to negotiate or arrange, or to offer to negotiate or arrange, a mortgage loan between a person that makes or funds mortgage loans and a buyer, (2) to issue a commitment for a mortgage loan to a buyer, or (3) to place, assist in the placement, or find a mortgage loan for a buyer.

The bill defines "employee" as a person who may be required or directed by a registrant to originate mortgage loans in consideration of direct or indirect gain or profit. The bill specifies, however, that "employee" does not include an independent contractor or any person who has a similar employment relationship with a mortgage broker.

Registration of mortgage brokers

(secs. 1322.02(A), 1322.03, and 1322.04)

To be registered as a mortgage broker, a person currently must submit to the Superintendent of Financial Institutions an application that contains certain information. This information, in part, must specify the location where the mortgage broker business is to be transacted, the names and addresses of certain owners, and information about the person who will be managing the location's operations, including the education or experience of that person.

Under existing law, a person must obtain registration for the person's main office and every other office to be maintained by the person for transacting mortgage broker business in Ohio. The bill eliminates the requirement that a person obtain registration for the person's main office, but adds the requirement that a registrant maintain an office location in Ohio for the transaction of mortgage broker business in this state. The bill also requires that a photograph of each location where business is to be transacted accompany the application for registration.

Currently, on a registration application, the name and address of a sole proprietor or the partners in a partnership must be supplied. Also, if the applicant is a corporation, the name and address of each shareholder owning 5% or more of the corporation must be provided. Existing law additionally provides that if the applicant is a partnership or corporation, the applicant must designate one of the partners or shareholders named in the application, as responsible for managing the operations of a location or locations where business is to be transacted.

The bill adds that if the applicant is any other entity, the name and address of any person that owns 5% or more of the entity that will transact mortgage broker business must be supplied on the application for registration. The bill also adds that if the applicant is any other entity, the applicant must designate a natural person that owns 5% or more of the entity that will transact business as a mortgage broker as responsible for managing the operations of the location or locations where the business is to be transacted. The bill also makes conforming changes recognizing this designation.

Current law also requires that the applicant for registration submit evidence that the sole proprietor, partner, or shareholder designated on the application as managing the operations of a location's mortgage broker business meets certain education or experience requirements set forth in current law. To meet the education requirements, this person must have at least an associate degree in an area relating to finance, banking, or business administration earned at an accredited college or university. However, the person also may qualify for registration as a mortgage broker if that person possesses at least three years of experience in the mortgage and lending field, which may include three years of experience that the Superintendent of Financial Institutions determines meets the current law's experience requirement. Evidence of this experience may include letters of employment from previous or current employers.

The bill provides that, after its effective date, evidence of compliance with the education requirements in current law is not acceptable as part of an application for registration as a mortgage broker. However, this provision is subject to two exceptions:

(1) If the person described above is registered as a mortgage broker on the bill's effective date and as part of this registration submitted evidence that the person met the education requirements, the person could renew the registration provided the certificate of registration is not surrendered, revoked, or refused renewal by the Superintendent after the bill's effective date.

(2) For a period ending three years after the bill's effective date, evidence that the person designated as responsible for managing the operation of a location or locations where business is or will be transacted meets the educational requirements of current law is acceptable on an application for a certificate of registration as a mortgage broker, if the Superintendent determines both of the following: (a) prior to the bill's effective date, the person was designated pursuant to current law as responsible for managing the operations of a location or locations where a registrant's business was transacted, having met the educational requirements of current law, and (b) the person is designated as responsible for managing the operations of an entity, authorized under the bill, where the mortgage broker business is or will be transacted.

The bill retains the Superintendent's current authority to determine what experience meets the experience requirement for mortgage broker registration, but provides that the experience approved by the Superintendent must be "related specifically to the business of mortgage loans." The bill also eliminates the provision that evidence of experience as demonstrated by letters of employment from previous or current employers may be submitted with the registration application.

Notification of changes in the management of a mortgage broker location

(sec. 1322.04(A)(3) and (E))

The bill provides that if a partner, shareholder, or natural person ceases to have responsibility for managing the operations of a mortgage broker location where mortgage broker business is transacted, the registered mortgage broker must do all of the following: (1) designate another partner, shareholder, or natural person as responsible for managing the operation of the location or locations where business is transacted, (2) notify the Superintendent of Financial Institutions in writing within ten days of the new designation, and (3) submit any additional information the Superintendent requires to establish that the newly designated partner, shareholder, or natural person meets the experience requirements specified by the bill.

Renewal of mortgage broker registration

(sec. 1322.04(B))

Currently, if a renewal fee for a certificate of registration as a mortgage broker is submitted to the Superintendent of Financial Institutions after April 30 but prior to June 1, the application is to be accompanied by a late renewal fee of \$100 for each location for which the renewal fee is late.

Under the bill, if a renewal fee is received by the Superintendent after April 30, the certificate of registration as a mortgage broker is not considered renewed, and the registration applicant must cease activity as a mortgage broker and apply for a mortgage broker certificate of registration. The late renewal fee is eliminated.

Corporate surety bond requirement

(secs. 1322.03(A)(5), 1322.04(A)(5), and 1322.05)

A mortgage broker registrant that conducts business solely as a mortgage broker is currently required to maintain net worth of at least \$25,000. Alternatively, a registrant must maintain an irrevocable letter of credit in that amount, from a financial institution approved by the Superintendent of Financial Institutions, with a term that coincides with the term of registration.

The bill replaces these requirements by specifying that a registered mortgage broker cannot conduct business in Ohio, unless the mortgage broker has obtained a corporate surety bond issued in favor of the Superintendent by a bonding company or insurance company authorized to do business in Ohio. The corporate surety bond must be for a principal sum of at least \$25,000 and have an additional sum of \$5,000 for each location in excess of one at which the mortgage broker conducts business. A copy of the bond must be filed with the Superintendent. The bill also specifies that the proceeds of the bond constitute a trust fund for the exclusive benefit of persons injured by a violation of the Mortgage Broker Law.

The bill also requires the mortgage broker to give notice to the Superintendent by certified mail of any action that is brought against the mortgage broker and of any judgment that is entered against the mortgage broker by a person injured by a violation of the Mortgage Broker Law. The notice must provide details sufficient to identify the action or judgment, and be filed with the Superintendent within ten days after the commencement of the action or notice to the mortgage broker of entry of a judgment. The corporate surety, within ten days after it pays any claim or judgment, also must give notice to the Superintendent by certified mail of the payment, with details sufficient to identify the person and the claim or judgment paid.

If the principal sum of the corporate surety bond is reduced by one or more recoveries or payments on it, the bill requires that the mortgage broker furnish a new or additional bond, so that the total or aggregate principal sum of the bond or bonds equals the sum set forth in the bill. Alternatively, the mortgage broker must furnish an endorsement executed by the corporate surety reinstating the bond to the required principal sum of it.

The bill specifies that the liability of the corporate surety on the bond to the Superintendent and to any person injured by a violation of the Mortgage Broker Law is not affected in any way by any misrepresentation, breach of warranty, or failure to pay the premium. The bill specifies that the liability also is not affected by any act or omission upon the part of the mortgage broker, by the insolvency or bankruptcy of the mortgage broker, or by the insolvency of the mortgage broker's estate. The liability for any act or omission that occurs during the term of the bond is to be maintained and in effect for at least two years after the date on which the bond is terminated or canceled.

A corporate surety bond may not be canceled by the mortgage broker or the corporate surety except upon notice to the Superintendent by certified mail, return receipt requested. The bill specifies that the cancellation may not be effective prior to 30 days after the Superintendent receives the notice.

The bill specifically prohibits a mortgage broker from failing to comply with its corporate surety bond requirements. A violation is subject to the bill's administrative penalties.

Administrative penalties; enforcement

(secs. 1322.10 and 1322.101)

Under current law, after notice and an opportunity for a hearing conducted in accordance with the Administrative Procedure Act, the Superintendent of Financial Institutions may suspend, revoke, or refuse to issue or renew a certificate of registration to a mortgage broker for a violation of specified provisions of the Mortgage Broker Law or the rules adopted under those provisions. The bill adds that the Superintendent may impose a fine of not more than \$1,000 for each day a violation of a law or rule is committed, repeated, or continued. If the mortgage broker engages in a pattern of repeated violations of a law or rule, the Superintendent may impose a fine of no more than \$2,000 for each day the violation is committed, repeated, or continued. The bill provides that all fines collected are to be deposited in the Consumer Finance Fund.

Under the bill, in determining the amount of the administrative fine to be imposed, the Superintendent is required to consider all of the following: (1) the seriousness of the violation, (2) the registrant's good faith efforts to prevent the violation, (3) the registrant's history regarding violations and compliance with division orders, (4) the registrant's financial resources, and (5) any other matters the Superintendent considers appropriate in enforcing the Mortgage Broker Law. A conforming change is also made in section 1322.101 to reflect recent statutory changes that vest enforcement of the Mortgage Broker Law in the Division of Financial Institutions, rather than the Division of Consumer Finance.

Exemption of mortgage bankers from the Mortgage Broker Law

(sec. 1322.01(D) and (E)(7))

Currently, a mortgage banker is excluded from the application of the Mortgage Broker Law. Under existing law, "mortgage banker" means any person (1) that makes, services, or buys and sells mortgage loans and (2) is "approved as a direct endorsement lender" by the United States Department of Housing and Urban Development, the United States Department of Veteran Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or "an approved correspondent with the United States Department of Housing and Urban Development."

The bill retains this exclusion, but redefines "mortgage banker" to mean any person that (1) makes, services, or buys and sells mortgage loans and (2) is "required to submit audited financial statements to, and is subject to a possible audit by," the United States Department of Housing and Urban Development, the United States Department of Veteran Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.

SAVINGS AND LOAN ASSOCIATION LAW
AND SAVINGS BANK LAW

Attestation on annual and semiannual reports

(secs. 1155.08 and 1163.11)

Currently, an Ohio-chartered savings and loan association or savings bank is required to submit annual and semiannual reports of financial condition to the Superintendent of Financial Institutions. The bill eliminates (1) the requirement that these reports be sworn to by the managing officer of the savings and loan association or savings bank, and (2) the provision that permits the correctness of these reports to be attested to by at least three of the directors of the association or bank, or an auditing committee appointed by the association's or bank's board of directors.

Publication of certain financial reports

(secs. 1155.08 and 1163.11)

Under existing law, a savings and loan association or a savings bank is required to publish its annual "statement of assets and liabilities" in a newspaper or periodical that is regularly issued and has a general circulation in the county in which the association or bank is located. Current law also requires that a copy of this published statement be available for public inspection at the association's or bank's place of business.

The bill eliminates the publication requirement, and instead retains only the requirement that a savings and loan association's or savings bank's annual "statement of condition" be available for public inspection at the association's or bank's place of business.

The elimination of this publication requirement is based on rules adopted by the Division of Financial Institutions in response to the elimination of this requirement by federal regulators. Also, the change in terminology from "statement of assets and liabilities" to "statement of condition" apparently reflects the fact that federal regulators, including the Federal Deposit Insurance Corporation (FDIC), require a "report of condition" or a "statement of condition and operations" from the institutions they regulate, which includes Ohio-chartered savings and loan associations and savings banks that are insured by the FDIC.

HISTORY

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