BEFORE THE HOUSE FINANCIAL INSTITUTIONS COMMITTEE

House Bill 38 Proponent Testimony

Thursday, October 31st, 2019

Chair Jordan, Vice Chair Hillyer, Ranking Member Crossman, and members of the House Financial Institutions Committee, thank you for the opportunity to provide proponent testimony on House Bill 38. My name is Don Boyd and I am State Government Relations Director and Legislative Counsel for the Ohio Bankers League.

The Ohio Bankers League is the state's leading trade association for the Ohio banking industry—and is Ohio's only organization focused on meeting the needs of all banks and thrifts in the Buckeye State. For more than 125 years, the OBL has been the voice of the Ohio banking industry fostering a cooperation that has made it one of the strongest and most reputable financial trade associations in the country.

By linking banks, bankers, and industry experts—and by pooling their intellectual and capital resources—the OBL serves as a powerful creator of knowledge and collective resources. The non-profit association is comprised of nearly 200 FDIC-insured financial institutions including commercial banks, savings banks, and savings and loan associations ranging in size from just over $14 million in assets to more than $2.5 trillion.

First, I would like to begin by thanking Vice-Chair Hillyer for working with our organization and several others representing Ohio's financial institutions for trying to address issues left over from last General Assembly. I will be testifying today on a specific piece contained in Substitute HB 38 that would have a significant positive impact on Ohio's banks. This provision would repeal Ohio Revised Code § 1349.72 that was created in House Bill 489 from the 132nd General Assembly. The provision sets a few new requirements that are both overly broad and vague while providing no real mechanism to seek guidance.

ORC 1349.72 requires a notice to be sent to consumers via U.S. Mail prior to collecting or attempting to collect on a debt secured by a junior lien on residential real property. The notice must be in at least 12-point type and provide name and contact info of person collecting debt, amount of debt, and a statement that (1) debtor has a right to an attorney, (2) debtor may qualify for Chapter 7/liquidation or Chapter 13/reorganization bankruptcy relief, AND (3) debtor that qualified under Chapter 13 may be able to protect the property from foreclosures. One of the largest problems with this section is that there is no definition of what qualifies as an attempt to collect. Depending how broad it is construed, simply notifying a customer that their payment is due or providing a monthly statement could be construed as an attempt to collect and require the notice be sent. Further, many banks provide a grace period up to 90 days for customers and some customers do not even consider themselves as late on their payment during this time. Customers also do not face any late fees or negative consequences if they pay during this time period. However, banks are still required to send this notice talking about attorneys and bankruptcy which leads to an extremely negative customer experience. The fact that the notice requirements, such as the type point to be used, are so specific yet the rest of the statute is so vague should make it clear what the goal of this provision is, increased litigation.

Following passage of the bill, we reached out to several state agencies on behalf of our members for guidance on how to comply with this provision. However, no state agency is tasked with enforcing this Section, so none were able to provide guidance. Additionally, in response to a request for clarification, the Legislative Services Commission stated that, "Only a court could decide the scope of this provision for certain." A copy of that memo has been submitted along with my testimony. In short, this puts all banks in Ohio in an extremely precarious position and opens them up unnecessarily to potential litigation when banks do not even appear to be the original target of this legislation.

In our opinion, there are adequate protections for consumers already in law, most significantly with the Federal Fair Debt Collections Practices Act (FDCPA), and ORC 1349.72 should be repealed in its entirety. If there is an issue that needs to be addressed in the future, OBL stands ready to be a willing partner to try to address the issue. However, up to this point, we do not believe there has been a showing that there is an issue with Ohio's banks in this space that warrants the additional regulatory burden and potential liability created by ORC 1349.72.

For these reasons we urge your favorable consideration of HB 38. Thank you for your time and I would be happy to try to answer any questions.