Senator Bob Hackett
Chair, Senate Insurance & Financial Institutions Committee
1 Capitol Square, 1st Floor
Columbus, Ohio 43215
Delivered via email: Aaron.Mabe@ohiosenate.gov

November 30, 2020

The Honorable Chairman Hackett,

The OBL is the foremost 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. The non-profit association is comprised of more than160 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 and employing over 60,000 Ohioans.

I would like to begin by thanking this Committee for their continued and thorough review of House Bill 38 and reiterate OBL's support for the legislation. This bill contains two provisions of significant importance to OBL members. The first would update the notice requirement contained in Ohio Revised Code (O.R.C) § 1349.72 which was created in House Bill 489 from the 132nd General Assembly. OBL's previous testimony, which is included, details the intricate issues that this vague statute has caused. However, the key point is that HB 38 would provide much needed clarity in the statute and ease the compliance burden on banks.

The second update is to Section 1115.05(B) of the O.R.C provides, in relevant part, that "a bank or **bank holding company** whose principal place of business is in [Ohio] *or any other state* may charter or otherwise acquire an Ohio bank…", subject to certain limitations related to control of total deposits in Ohio and the United States, respectively. O.R.C. § 1115.05(A)(2) defines an "Ohio bank" as "a state bank [chartered by the State of Ohio] or a national bank whose principal place of business is in [Ohio]." It is important to note that under Ohio law, the term "bank," without the prefix "state," expressly *includes* savings associations regulated by the OCC or the former office of thrift supervision, the appropriate bank regulatory authority of another state, or the appropriate bank regulatory authority of another country.

The term "bank holding company," however, as used throughout Title 11 of the O.R.C., including O.R.C. § 1115.05(B), does not expressly include "savings and loan holding companies" (S&LHC), a term separately defined under O.R.C. 1101.01(U). Therefore, while likely not intended, a strict interpretation of Section 1115.05(B) may arguably prevent a S&LHC headquartered outside of Ohio from acquiring an Ohio-based savings association, absent certain approvals from the Ohio Division of Financial Institutions. It is worth noting that such a transaction is not expressly prohibited by Ohio law, which may be subject to preemption in the case of federally-chartered entities, and that the interpretation and impact is inconsistent with the intent of the relevant underlying legislation.

Based on the foregoing, it appears that this is likely an inadvertent oversight that may have occurred during the recodification process. Therefore, the amendment included in the substitute version of the bill would fix this issue.

Thus, we urge your support HB 38. Please feel free to contact me if you have any questions regarding our position at dboyd@ohiobankersleague.com or (614) 340-7608.

Sincerely,

Don Boyd
State Government Relations Director
& Legislative Counsel
Direct: (614) 340-7608
Email: dboyd@ohiobankersleague.com

BEFORE THE SENATE INSURANCE & FINANCIAL INSTITUTIONS COMMITTEE
House Bill 38 Proponent Testimony
Tuesday, September 1, 2020

Chair Hackett, Vice Chair Hottinger, Ranking Member Craig, and members of the Senate Insurance & 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 more than 170 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 $3 trillion.

First, I would like to begin by thanking the sponsor, Representative Hillyer, for working with our organization and several others representing Ohio's financial institutions 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 update Ohio Revised Code § 1349.72 that was created in House Bill 489 from the 132nd General Assembly. HB 489, which is currently in statute, created a new notice requirement that is 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

4215 Worth Avenue, Suite 300, Columbus, OH 43219
www.ohiobankersleague.com
614.340.7595 *phone* 614.340.7596 *fax* 800.686.6755 *toll free*

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 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 makes it extremely likely that litigation will result.

Following passage of the bill, OBL 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.

OBL worked with members of the House Financial Institutions Committee in both parties and other interested parties to come up with a compromise that would alleviate many of the concerns banks have with the current notice requirement while still addressing the concerns of certain members on the committee that debt servicers down the line were not providing adequate notices to consumers. Based on the testimony from HB 489 originally enacting the notice requirement, debt servicers were the main target of the legislation, not depository institutions.

The changes included in HB 38 would provide much needed clarity in the statute and ease the compliance burden on banks. The revisions would do several things including only requiring the notice to be sent 30 days in advance of filing a foreclosure action rather being triggered based on the lienholder collecting or attempting collect. It also allows the notice to be included in any other communication sent to the debtor. Since banks, as opposed to some other debt servicers, are required to send numerous notices by state and federal law, this allows banks to include the information in those other communications.

In short, the changes would make this notice requirement workable and cut down on compliance costs. HB 38 passed unanimously out of the House Financial Institutions Committee and by a vote of 91 to 1 on House floor. 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.