



BEFORE THE SENATE FINANCIAL INSTITUTIONS & TECHNOLOGY COMMITTEE
House Bill 133 Proponent Testimony
Tuesday, May 11, 2021

Chair Wilson, Vice Chair Hottinger, Ranking Member Maharath, and members of the Senate Financial Institutions & Technology Committee, thank you for the opportunity to provide proponent testimony on House Bill 133. My name is Don Boyd, and I am Vice President of State Government Relations and General Counsel for the Ohio Bankers League.

Position

Amendment 1143 to House Bill 133 under consideration today is critical to protecting financial institutions across the state from potentially negative unintended consequences of Senate Bill 13 passed earlier this year. In essence, the amendment would make clear that attorney malpractice claims related attorney opinions of title issued prior to June 16, 2021 would not be subject to certain changes included in Senate Bill 13. The emergency clause included in the amendment is critical to making sure this issue is addressed prior to the effective date of SB 13. We respectfully urge your support for this amendment and for House Bill 133.

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 130 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 and employing over 60,000 Ohioans.

Amendment 1143 to HB 133

Earlier this year, the legislature passed SB 13 which reduced the timeframe to file a lawsuit, or statute of limitations, on contracts. OBL worked diligently to ensure that banks’ ability to collect on debts were not impacted by the legislation.

An additional piece of the legislation dealt with liability for attorneys from potential malpractice claims. Under current law, prior to the SB 13 changes, a malpractice claim could generally be brought one year

from the date of discovery whether that was one year after the attorney action giving rise to the claim or 40 years down the road. The change added to SB 13 would, except in certain circumstances, eliminate ability to file a malpractice claim after four years from the date the action giving rise to the claim took place.

Fast forward to now, banks have alerted OBL to the issue this could cause for banks that rely on attorney opinions to protect the loans they have issued and ensure their customer will have proper title and institution will be able to properly record their lien. Typically, in this scenario, the attorney would issue an opinion of title and if an issue or title defect appeared later, the bank could file a claim against the attorney if the attorney acted negligently, as long as it was filed within a year from when the issue was discovered. The change included in SB 13 to the malpractice laws limiting it to four years essentially renders the attorney opinions useless because most title issues do not present until beyond that four-year mark.

The most important piece is the backward looking, or retroactive, piece of what happens with the attorney opinions that have already been issued for loans on the books which is what is being addressed with this amendment. Essentially, this protects the loans that banks already have on the books from the changes included in SB 13 and for which it would be impossible to back and get title insurance for at this point. The amendment today simply clarifies that, for title opinions issued prior to the effective date of SB 13, a claim could be brought one year from the date of accrual regardless of when the act or omission giving rise to the claim occurred. OBL worked with the Ohio State Bar Association and other interested parties on this issue and is committed to further conversations as necessary to address any other issues.

Therefore, we ask for your favorable consideration of this amendment and House Bill 133. Thank you for your time and I would be happy to answer any questions.