



Legislative Bulletin

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*Committee Activity - **Predatory Lending Task Force** 06/11/2003*

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The committee convened to receive written recommendations from: Jim Petro, Attorney General; Ohio Department of Commerce; Ohio Association of Mortgage Brokers; Ohio Financial Services Association; Ohio Mortgage Bankers Association; Ohio Bankers League.

Ohio Attorney General

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For over 30 years the CSPA has proven to be a fair and effective regulatory scheme in providing both protections for Ohio consumers and marketplace flexibility for Ohio businesses. On the basis of those decades of experience administering the CSPA in the interests of Ohio's consumers, the attorney general's office believes that the next logical step in continuing Ohio's efforts to deter predatory lending practices is to amend the CSPA to extend its coverage to those mortgage lending institutions that are not federal- or state-chartered depositories.

In my opinion, this can be accomplished most simply by amending ORC 1345.01(A) to substitute 5725.01(A), (C), (D), (E) for the current cross-reference 5725.01. The elimination of the division (B) from the exemption would bring non-depository mortgage lenders under CSPA jurisdiction. Applying the CSPA to mortgage lenders would grant Ohio victims of predatory lending a comprehensive enforcement mechanism supplementing the positive steps previously taken by the legislature in amending the Mortgage Brokers Act and enacting the Ohio HOEPA.

I strongly believe that this recommendation, if enacted by the Ohio Legislature, would catapult Ohio into the forefront of protecting homeowners against the scourge of predatory lending. In the event, however, that the Legislature chooses not to apply the CSPA to non-depository mortgage lenders, an alternative would be to modify the Ohio HOEPA, adopted in HB386, to make a violation of those acts an actionable violation of the CSPA. Specifically, I recommend that if any financial institution violates the above-referenced Ohio laws, then that financial institution would lose its CSPA exemption pursuant to ORC 1345.01 (A).

### **Ohio Department of Commerce**

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* Recommendation: Appropriate funds for six new staff members in the Division of

Financial Institutions. Comment: A supplemental appropriation has been included in the Senate version of the FY 04-05 budget bill, HB95. New staff will assist in the implementation and administration of SB76 and HB386.

* Recommendation: Extension of "packing" prohibition contained in HB386 to all first and second mortgage loans. Comment: This would protect all mortgage borrowers from financing single premium insurance products. This incorporates a recommendation contained in the AARP Home Loan Protection Act.

* Recommendation: Extension of "loan flipping" prohibition to all first mortgage loans. Comment: This would protect all mortgage borrowers from frequent re-financing transactions that are not in their best interest.

* Recommendation: Add to the Ohio Mortgage Loan Act the business conduct standards and prohibitions applicable to mortgage brokers under the Ohio Mortgage Broker Act. Comment: This would make such standards and prohibitions applicable to first and second mortgage loans without regard to whether a mortgage broker is involved in the transaction.

* Extend the business conduct standards and prohibitions contained in the Ohio Mortgage Broker Act to first mortgage loans made by entities not licensed by DFI. Comment: This would make such standards and prohibitions applicable to first and second mortgage loans without regard to whether a mortgage broker is involved in the transaction, and without regard to whether the lender is licensed by DFI.

* Add to Ohio Mortgage Broker Act additional restrictions on advertising that would prohibit advertisements which indicate that special terms, reduced rates, guaranteed rates, particular rates or any other special features are available unless any limitations are clearly stated. Comment: This is aimed at false and deceptive advertising, including the use of "bait and switch" tactics. It represents an expansion of the mortgage broker advertising restrictions established by SB76

* Add to the Ohio Mortgage Loan Act the advertising standards applicable to mortgage brokers (e.g. ORC 1322.07 (B) (C) and (E) Comment: This would more broadly attack the problem of deceptive advertising.

* Adopt by reference the federal Truth in Lending Act advertising standards and disclosure requirements to Ohio law. Comment: This also would more broadly attack the problem of deceptive advertising. Putting these standards into Ohio law would provide for state-level enforcement against violators.

* Mandatory licensure of appraisers. Comment: Mandatory licensure would ensure that all appraisers working in Ohio are subject to the same business conduct, educational and enforcement standards. We expect that this will combat the use of falsely inflated appraisals in "property flipping" schemes.

* Add to the Ohio Mortgage Broker Act a prohibition on mortgage brokers instruction, inducing or coercing an appraiser to produce a particular appraised or market value, or range of appraised or market values. Comment: We expect that this

will combat the use of falsely inflated appraisals in "property flipping" schemes.

* Amend Ohio law to prohibit the "pyramiding" of late charges. Comment: Current law is unduly punitive to a borrower who is late on or misses a payment. This recommendation is contained in the AARP Home Loan Protection Act.

* Extend the Ohio Consumer Sales Practices Act to servicing/escrow activities by companies not licensed by the Division of Financial Institutions. Comment: This would prohibit unfair and deceptive practices by these companies. It would also provide an enforcement mechanism (both public and private) against companies not under the jurisdiction of the Division of Financial Institutions.

* Monitor the federal Office of Thrift Supervision's proposal to reverse the federal preemption of state law limits on prepayment penalties with respect to mortgage loans with variable rates or other alternative features. Comment: Reversal of the preemption would cause the Ohio law limitations on prepayment penalties contained in ORC 1343.011 and ORC 1321.57 (G) (2) to be applicable to mortgage loans with variable rates or other alternative features.

* Give the Director of Commerce the statutory authority to submit information to the Federal Bureau of Investigation for the conduct of national background checks. Comment: This will expand upon SB76 and improve the Division of Financial Institution's ability to check the background of mortgage broker and loan officer applicants.

* Enhance the penalties for mortgage lending improprieties when the victim is elderly or disabled. Comment: Responsive to the observation that since many older Ohioans own their homes, or at least have a high level of equity built up in their homes, they are targets for abusive lending practices. This would be an expansion of the enhanced penalties contained in HB386.

* Enact an Ohio law that regulates the debt collection activities by companies collecting on their own debts. Comments: Current law prohibits abusive, unfair and deceptive debt collection practices by third parties, but not by lenders collecting on their own debts.

* Improve the Ohio law regarding providing loan pay-off information to borrowers. Comments: Current law requires that pay-off information regarding second mortgages loans be provided within five business days. We recommend extending this requirement to first mortgage loans.

* Amend Ohio law to prohibit a creditor from recommending or encouraging default on an existing loan in connection with a new loan that refinances all or part of the existing debt. Comment: Unscrupulous lenders encourage default so that the consumer will be forced to close on the new loan, even if it contains unfair terms and conditions, or face foreclosure on the existing loan. This recommendation is contained in the AARP Home Loan Protection Act.

* Closely monitor the effect of the administrative rules recently enacted by the federal

Department of Housing and Urban Development to combat "property flipping."
Comment: If the new rules are not effective in eliminating abuse "property flipping," there may be a need for action on the state level.

* Closely monitor the proposed changes to the administrative rules promulgated under the federal Real Estate Settlement Procedures Act. Comment: The proposed rules seek to address the issue of loan originator compensation (including the use of the "yield spread premium" by fundamentally changing the way in which the payments are recorded and reported to consumers. The purpose rules also would improve the Good Faith Estimate ("GFE") settlement cost disclosure to make the GFE firmer and more usable, to facilitate shopping for mortgages, to make mortgage transactions more transparent, and to prevent unexpected charges to consumers at settlement.

Ohio Association of Mortgage Brokers - Ohio Financial Services Association - Ohio Mortgage Bankers Association

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It's clear that Ohio has been a leader in legislation aimed at predatory lending practices with the passage of SB 76 and HB 386. Proper enforcement of these two laws must occur before further legislation is considered. The administration had over \$5.5 million available in the Consumer Finance Rotary Fund to enforce SB76 prior to the Office of Budget and Management just having taken \$3.2 million of that money. It is our recommendation that those funds be used for their primary purpose. We recommend enforcement of SB76 and HB 386 with the formation of a Mortgage Fraud Unit at the department, fully staffed with investigators and enforcement officers.

In addition, we recommend that young people of Ohio be educated and armed with knowledge in the area of personal finance. Finally, we support the call for mandatory licensing of all appraisers, coupled with improved communications between the divisions of Commerce regulating and licensing entities involved in the mortgage loan transactions.

We cannot lose site of the fact that a record number of Ohioans are experiencing the American dream of homeownership. Requiring the enforcement of current laws by a fully-equipped mortgage fraud unit, coupled with appraiser licensing and early education of Ohio's children with regard to financial responsibility is a measured way to address any abusive lending practices still occurring in the marketplace. It will remove bad actors from the industry and arm consumers with knowledge, while preserving access to credit for so many Ohioans to continue

pursuing the dream of homeownership.

### Ohio Bankers League

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The key to stopping abusive practices is "enforcement" and "education." The best way for the state to help consumers is to get the predators out of the lending business through prosecution and enforcement of existing laws. There has been no evidence presented that banks are predatory lenders. There is no predatory lending at commercial banks, savings banks and savings associations because there is already a strong regulatory system in place.

There are already significant laws and regulations in place to tackle the issue of abusive lending practices, and what is needed is rigorous enforcement of existing provisions. Regulators are very serious about protection of consumers, and applying the Ohio Consumer Sales Practices Act to loans and lending will not work.

Expanded access to credit from responsible lending institutions has enabled consumers and neighborhoods to set the foundations for true economic gain. The rapid expansion of the subprime lending market is evidence of the great demand on the part of credit-impaired consumers to access that opportunity. Unfortunately, that rapid growth has also attracted unscrupulous opportunists who abuse unsophisticated consumers by masquerading as reputable lenders and engaging in already illegal activities.

Some will argue that the answer is to remove freedom of choice from borrowers so that they cannot make bad choices. Others will argue that because the expanded access to credit has given rise to the ability of the unscrupulous to take advantage of borrowers, that expanded access to credit must be removed. Both of these approaches deny borrowers the opportunity to achieve financial success in the name of recovering the chance of harm. They are well-intentioned but are misguided, and will only serve to reverse the exciting potential unleashed by the availability of credit from responsible lenders.

Instead, the best course to surgically address the issues surrounding predatory lending is to: first, empower borrowers with the financial literacy to make sound choices both now and for the rest of their lives; and second, to take decisive action to enforce existing law and prosecute the criminals engaging in the fraudulent, unfair, and deceptive business practices called "predatory lending." Even if the Legislature passes a new and more restrictive law, uniformed borrowers will still be easy victims for those willing to break that, or any other new or existing law, and inconsistent enforcement will do nothing to deter such disregard for the law.


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