



August 31, 2017

## OHIO BANKING CODE AMENDED; STATUTES RELIED UPON FOR MOST FAVORED LENDER AUTHORITY REPEALED

H.B. No. 49, Ohio's biennial budget and appropriations bill, contains provisions amending Ohio banking law and repealing statutes relied upon for most favored lender authority. These amendments are effective January 1, 2018.

Ohio has historically chartered "banks," "savings banks" and "savings and loan associations." Each type of entity had its own chapter in the Banking Code and separate provisions providing for powers and duties. The Ohio Banking Code as revised refers to all institutions chartered under the Ohio Banking Code as "banks" and repeals the chapters regarding savings banks and savings and loan associations. The revised Banking Code provides that savings banks and savings and loan associations currently in existence have the powers, privileges, duties and requirements imposed by the amended Banking Code. The revised Banking Code refers to "mutual state banks" and "stock state banks" to address the different types of ownership permitted under the Banking Code as amended.

By repealing the chapters regarding savings and loan associations and savings banks, Section 1151.21 and Section 1161.28 that permitted savings and loan associations and savings banks to charge interest and fees as permitted in the institution's constitution and by laws are both repealed. Thus, national banks and federal savings banks located in Ohio and other banks chartered under Ohio banking law will no longer be able to rely on these provisions under a most favored lender doctrine analysis. This is the unfortunate result when the budget bill is used to make substantive amendments to existing statutes.

Under the bill the Banking Code is revised to clarify that many of the provisions, including those relating to chartering, apply only to Ohio chartered banks, referred to as a "state banks." Previously, the term bank was used both to refer to all banks and to refer to Ohio chartered banks.

The amended Banking Code revises the Ohio banking prohibition to read as follows:

No person shall solicit, receive, or accept money or its equivalent for deposit as a business in this state, except a state

bank, an entity doing business as a bank, savings bank or savings association under authority granted by the bank regulatory authority of the United States, another state of the United States, or another country or a credit union that is authorized to accept deposits in this state.

Previously state banks chartered in another state were prohibited from soliciting, receiving or accepting deposits in Ohio unless the bank had a banking office in Ohio.

The bill adds a provision to Section 1109.02 regarding bank powers providing that a state bank may exercise all powers, perform all acts and provide all services permitted for national banks and federal savings banks other than those dealing with interest rates and provides a mechanism for providing the Ohio superintendent of financial institutions with prior written notice of such action taken prior to the adoption of parity regulations by the superintendent.

The amended Banking Code adds Section 1109.04(A) allowing a bank, in good faith, to rely on information, agreements, documents and signatures provided by its customers as being true, accurate, complete and authentic and representing what they purport to represent; and that the person signing has full capacity and complete authority to execute and deliver such documents.

The amended Banking Code adds Section 1109.151 providing that unless otherwise expressly agreed to in writing by the bank, the relationship between a bank and its obligor or customer creates no fiduciary duty or other special relationship or duty.

The bill does not change the rate and fee authority provisions applicable to banks in Sections 1109.18 and 1109.20 or the parity provision for open-end non-real estate secured credit found in Section 1109.181.

The bill addresses bank formation and operation issues, including articles of incorporation, obtaining a certificate of authority to commence business, operation of mutual state banks, bank directors, conversion from a mutual state bank to a stock state bank, assessments imposed by the Superintendent and capital restoration plans for under capitalized state banks.

Please let us know if you have questions or would like more information on the Ohio banking law revisions in H.B. No. 49. □

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