



OHIO REGULATOR ANNOUNCES CHANGE OF POSITION ON SMALL LOAN ACT

The Ohio Division of Financial Institutions posted on its website and circulated a "Bank Partnership Alert" in which the Division takes on new position on interpreting the Ohio Small Loan Act ("SLA"). The SLA applies to loans of \$5,000 or less. The SLA provides:

No person shall engage in the business of lending money, credit, or choses in action in amounts of five thousand dollars or less, or exact, contract for, or receive, directly or indirectly, on or in connection with any such loan, any interest and charges that in the aggregate are greater than the interest and charges that the lender would be permitted to charge for a loan of money if the lender were not a licensee, without first having obtained a license from the division of financial institutions under sections 1321.01 to 1321.19 of the Revised Code.

Sections 1321.01 to 1321.19 of the Revised Code do not apply to any person doing business under and as permitted by any law of this state, another state, or the United States relating to banks, savings banks, savings societies, trust companies, credit unions, savings and loan associations substantially all the business of which is confined to loans on real estate mortgages and evidences of their own indebtedness.

...

The first paragraph of this section applies to any person, who by any device, subterfuge, or pretense, charges, contracts for, or receives greater interest, consideration, or charges than that authorized by this section for any such loan or use of money or for any such loan, use, or sale of credit, or who for a fee or any manner of compensation arranges or offers to find or arrange for another person to make any such loan, use, or sale of credit.

Ohio Rev. Code § 1321.02. Section 1321.02 was last amended in 2017 to exclude registrants conducting a mortgage business under chapter 1322 from the SLA. The SLA regulations provide that loans made pursuant to Sections 1321.01 to 1321.19 [SLA] shall not be sold, transferred or assigned to or collected by persons other than a small loan licensee pursuant to Section 1321.01 to 1321.19 or an exempt entity described in Section 1321.02 that is properly conducting business under and as permitted by any law or authority referred to in that section. Ohio Admin. Code § 1301:8-2-12(F).

Based on the statutory language, both the industry and the Division have historically interpreted the SLA "broker" provision to apply only to those brokering SLA loans. Without explanation the Division has issued the following Alert:

Any nonbank entity that is compensated for arranging or brokering any bank loan in the amount of \$5,000 or less must obtain a license under the Small Loan Act (SLA). This requirement applies to nonbank entities regardless of whether the nonbank is compensated by the borrower or the bank. The Short-Term Loan Act (STLA), General Lon Law (GLL), and Consumer Installment Loan Act (CILA) are not applicable to nonbank entities that broker bank loans.

As this is a change in interpretation without any change in the statutory language and without any explanation, questions remain that may result in legal challenges to the new enforcement position.

If you have questions regarding the interpretation of the statutory language or the Division's position, please contact us

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