



# Ohio Legislative Service Commission

*Tom Middleton*

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## Fiscal Note & Local Impact Statement

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**Bill:** [H.B. 80 of the 130th G.A.](#)

**Date:** June 4, 2013

**Status:** As Introduced

**Sponsor:** Reps. Driehaus and Foley

**Local Impact Statement Procedure Required:** No

**Contents:** Requires the registration of residential mortgage servicers

### State Fiscal Highlights

- The bill requires residential mortgage servicers to obtain a certificate of registration from the Department of Commerce and sets forth business standards regulating the industry. An annual fee of \$1,000 would be deposited into the Consumer Finance Fund (Fund 5530), along with any fine revenue received. The number of qualifying mortgage servicers is currently uncertain. There would be a corresponding increase in expenses from Fund 5530 to regulate mortgage servicers.
- Certain violations under the bill would be handled under the Consumer Sales Practices Act (CSPA). As a result, the number of complaints handled by the Office of the Attorney General's Consumer Protection Section, funded out of the GRF and the Consumer Protection Enforcement Fund (Fund 6310), could increase. However, the number and scope of complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill is unknown.

### Local Fiscal Highlights

- As a result of possible CSPA violations, the number of civil cases filed in county and municipal courts may increase. The actual number of cases filed would most likely be relatively small since the Attorney General's Office would presumably attempt to resolve a complaint before filing in court.

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## Detailed Fiscal Analysis

### Background and overview

The bill requires mortgage servicers or those persons offering accelerated residential mortgage payment plans for compensation or gain to be registered with the Department of Commerce's Division of Financial Institutions (DFI) and to abide by certain standards of practice. The bill exempts several entities,<sup>1</sup> and specifies that registered mortgage lenders and registered mortgage brokers are exempt from registration but must not violate certain prohibitions on the actions of mortgage servicers, and must comply with certain standards of practice required of mortgage servicers.

A residential mortgage servicer is a person who is in the business of receiving scheduled mortgage payments from a borrower. In today's residential mortgage market, it is common for the original lender to sell a loan multiple times, along with the rights to service the loan by contract. The servicer generally has a contract with the holder of the loan to collect payments for the loan as well as amounts the borrower pays into an escrow account for taxes and insurance. The contract may also require the servicer to notify the borrower of late fees and foreclosure actions. According to the National Conference of State Legislatures, 28 other states currently have licensing or registration requirements for mortgage servicers.

### Mortgage servicer registration

Under the bill, mortgage servicers must pay a \$200 investigation fee, a \$1,000 annual registration fee, and any additional fee required by law. As a result, there would be a gain in revenue to the Consumer Finance Fund (Fund 5530), depending on the number of servicers who register. The number of mortgage servicers who would qualify in the state is currently unknown to LSC staff. In addition to the registration requirement, the bill requires mortgage servicers to be bonded or otherwise meet certain net worth requirements. If a mortgage servicer changes its place of business outside of the original municipal corporation where the servicer was originally registered, the servicer would be required to submit a new application and pay the required investigation and registration fees.

All of these new requirements are likely to increase costs for DFI although the registration fee would offset some or all of the additional expense. It could be that additional staff is needed to handle new registrations, investigations, provide legal

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<sup>1</sup> Exempted entities include banks; savings banks; trust companies; savings and loan associations; credit unions; life, property, or casualty insurance companies; attorneys or law firms acting on behalf of a mortgage note holder or mortgage services, with exceptions; political subdivisions and other governmental agencies; institutions of higher education; and debt collectors acting under the name of, or agent for, a mortgage servicer registrant.

counsel, and provide program support. Ultimately, the additional cost arising from DFI's regulation of mortgage servicers would depend on the revenue generated from mortgage servicer registration fees.

### **DFI disciplinary actions**

The bill places a number of requirements on mortgage servicers that concern record keeping and notification requirements to borrowers and DFI. In general, the bill requires that mortgage servicers act in good faith and prohibits registrants from using various unfair, deceptive, or unconscionable means to collect any claim on a residential mortgage loan. For enforcement, the bill authorizes the Superintendent of Financial Institutions to revoke, suspend, or refuse to renew any mortgage servicer registration if, pursuant to an administrative hearing, (1) a mortgage servicer fails to comply with the provisions of the bill, the Consumer Sales Practices Act, federal debt collection laws, or any other applicable law, (2) the registrant has been convicted of or pleads guilty to a felony or certain other offenses involving theft, stolen property, forgery, fraud, money laundering, and so forth, or (3) the registrant's comparable registration or license in any other state has been revoked. In addition to or instead of any revocation, suspension, or registration denial, DFI may impose a monetary fine. Fines are limited to \$1,000 for each day of a violation. DFI may request a court of common pleas to enjoin violations of the mortgage servicer registration provisions. For persons acting as a mortgage servicer without a registration, DFI may request, and the court may impose, a civil penalty for that conduct of no more than \$5,000 per violation. All fines so collected are deposited into the Consumer Finance Fund (Fund 5530).

### **Consumer Sales Practices Act – Attorney General**

The bill makes certain violations of the requirements and prohibitions an unfair or deceptive trade practice subject to the remedies available in the Consumer Sales Practices Act (CSPA). Overall, the statute authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies for various consumer transactions and provides consumers with a private right of action. There are two civil remedies available for handling violations of the CSPA: one civil remedy would be available to the Attorney General's Office, who can investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action, and the other civil remedy would be available to consumers.

The Consumer Protection Section of the Attorney General's Office, funded by both the GRF and the Consumer Protection Enforcement Fund (Fund 6310), would handle the associated legal work. Presumably, the Attorney General's Office would try to settle the issues surrounding violations of these new prohibitions prior to initiating any formal legal action. For example, the violators could simply agree to cease their conduct, and assuming they do so, the Attorney General's Office would stop investigation and enforcement. Similar to the procedures taken in existing CSPA cases, the Attorney General's Office would seek court action against a person as a last resort if

they perceive that the person is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General's Office could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade violators to cease their offending behavior.

If, on the other hand, the Attorney General's Office successfully pursues a civil remedy, the court adjudicating the matter can award the Attorney General all costs and expenses associated with its investigation, in addition to reasonable attorney's fees. The court may also order civil penalties up to \$25,000. Three-quarters of this civil penalty (as much as \$18,750 if the maximum \$25,000 possible fine is assessed), as well as the investigation costs and attorney's fees, would be credited to the state's Consumer Protection Enforcement Fund (Fund 6310). The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed).

As a result of the bill, the number of cases handled by the Consumer Protection Section could increase. However, the actual number of cases filed in county courts would most likely be relatively small since the Attorney General's Office would most likely attempt to resolve the complaint before filing in court. The number and magnitude of related complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown. Thus, whether the bill will create additional ongoing operating expenses for the Consumer Protection Section, as well as the amount of those potential costs, is uncertain.

As noted above, a consumer who believes a mortgage servicer has violated the law would also be able to pursue civil remedies, which means that additional civil suits could be filed. This could generate some additional filing fee and court cost revenue for counties and municipalities and place some additional burdens on the courts that will have to adjudicate these matters. It is uncertain how many consumers might pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small since they are more likely to report a complaint to the Attorney General's Office for resolution.

The table below lists those criminal prohibitions included in the bill as well as the potential maximum prison sentence and fine. At the state level, the GRF, the Victims of Crime/Reparations Fund (Fund 4020), and the Indigent Defense Support Fund (Fund 5DY0) may experience a minimal gain in the amount of court cost revenue from these penalties. The state court costs total \$29 for a misdemeanor. This \$29 misdemeanor amount is divided as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020. Violators of felonies of the fifth and fourth degrees typically are not sentenced to prison, as there is a preference against such an action unless the offense involves certain drug offenses, or other qualifying circumstances. As such, it is unlikely that the state will incur incarceration expenses.

<b>Criminal Penalties Associated with Mortgage Servicers</b>				
<b>Offense</b>	<b>ORC Reference</b>	<b>Penalty</b>	<b>Possible Prison Term</b>	<b>Possible fine</b>
Not being registered as a mortgage servicer and engaging in the business of collecting money, credit, or chooses in action for residential mortgage loans or otherwise act as a mortgage servicer	1323.03(A)(1)	Felony of the 5th Degree	6 to 12 months	Not more than \$2,500
Not being registered as a mortgage servicer and collecting accelerated mortgage payments from a biweekly or other accelerated payment plan that the person operates, arranges, or offered to arrange in connection with a residential mortgage	1323.03(A)(2)	Felony of the 5th Degree	6 to 12 months	Not more than \$2,500
Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on certain documents (by a mortgage servicer)	1323.15(F)	Felony of the 5th Degree	6 to 12 months	Not more than \$2,500
Knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a document (by a mortgage servicer)	1323.15(G)	Felony of the 5th Degree	6 to 12 months	Not more than \$2,500
Interfering or obstructing an examination or investigation by the Superintendent of Financial Institutions	1323.13	Felony of the 4th Degree	6 to 18 months	Not more than \$5,000

## **Background checks**

The bill requires that the Bureau of Criminal Identification and Investigation (BCI) in the Attorney General's Office conduct criminal records checks of mortgage servicer applicants to determine whether applicants have been convicted of or plead guilty to certain criminal violations of an existing or former law of this state, any other state, or the United States. The bill also requires that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check. All fees shall be paid by the applicant. Thus, there is no net fiscal effect on the Department of Commerce resulting from this provision. BCI charges \$22 and \$24 for state and national background checks, respectively. Thus, the Attorney General's General Reimbursement Fund (Fund 1060) may realize a gain in revenue corresponding to the number of background checks conducted in order to offset the additional costs such additional background checks would present for BCI.