



House of Representatives

General Assembly

File No. 120

February Session, 2000

Substitute House Bill No. 5017

House of Representatives, March 20, 2000

The Committee on Banks reported through REP. LANDINO of the 35th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning The Enforcement And Examination Authority Of The Banking Commissioner.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (e) of section 36a-428b of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (e) For purposes of section 36a-65 the commissioner shall [take into
4 account only] annually, on or after July first for the fiscal year
5 commencing on said July first, assess each foreign bank that has
6 established a state branch or state agency in this state, taking into
7 consideration (1) the assets of such foreign bank relative to the assets of
8 other foreign banks with a state branch or state agency in this state
9 provided only the assets of the state branches or state agencies located
10 in this state shall be considered, (2) the cost of any examination under
11 section 36a-428l, (3) the amount allocated to each Connecticut bank
12 and each Connecticut credit union under section 36a-65, and (4) any
13 other factor the commissioner deems appropriate to the administration

14 of sections 36a-428 to 36a-428n, inclusive, as amended.

15 Sec. 2. Subsection (b) of section 36a-494 of the general statutes, as
16 amended by section 29 of public act 99-36, is repealed and the
17 following is substituted in lieu thereof:

18 (b) Whenever it appears to the commissioner that any person has
19 violated, is violating or is about to violate any of the provisions of
20 sections 36a-485 to 36a-498, inclusive, or any regulation adopted
21 pursuant thereto, or any licensee has failed to perform any agreement
22 with a borrower, the commissioner may take action against such
23 person or licensee in accordance with section 36a-50.

24 Sec. 3. Section 36a-517 of the general statutes is repealed and the
25 following is substituted in lieu thereof:

26 (a) The commissioner may suspend, revoke or refuse to renew any
27 license, in accordance with section 36a-51 for any reason which would
28 be sufficient grounds for the commissioner to deny an application for a
29 license under sections 36a-510 to 36a-524, inclusive, or if the
30 commissioner finds that the licensee or any owner, director, officer,
31 member, partner, shareholder, trustee, employee or agent of such
32 licensee has done any of the following: (1) Made any material
33 misstatement in the application; (2) committed any fraud or
34 misrepresented, concealed, suppressed, intentionally omitted or
35 otherwise intentionally failed to disclose any of the material particulars
36 of any secondary mortgage loan transaction, including disclosures
37 required by part III of chapter 669 or regulations adopted pursuant
38 thereto, to anyone entitled to such information; (3) violated any of the
39 provisions of sections 36a-510 to 36a-524, inclusive, parts I, III and V of
40 chapter 669, sections 46a-65 to 46a-67, inclusive, or section 46a-98, or of
41 any regulations adopted pursuant thereto; or (4) failed to perform [a
42 written] any agreement with a borrower.

43 (b) Whenever it appears to the commissioner that any person has

44 violated, is violating or is about to violate any of the provisions of
45 sections 36a-510 to 36a-524, inclusive, or any licensee has failed to
46 perform any agreement with a borrower, the commissioner may take
47 action against such person or licensee in accordance with section 36a-
48 50.

49 Sec. 4. Section 36a-545 of the general statutes is repealed and the
50 following is substituted in lieu thereof:

51 Each applicant or licensee shall have established bookkeeping
52 methods and shall keep books and records at the place of business
53 specified in the license in a form and manner satisfactory to the
54 commissioner, or shall make such books and records available at such
55 place of business not later than five business days after requested by
56 the commissioner. All such books and records shall be preserved for at
57 least two years after the making of the final entry therein.

58 Sec. 5. Section 36b-23 of the general statutes, as amended by section
59 5 of public act 99-38, is repealed and the following is substituted in lieu
60 thereof:

61 No person shall make or cause to be made verbally or in any
62 document filed with the commissioner or in any proceeding,
63 investigation or examination under sections 36b-2 to 36b-33, inclusive,
64 any statement which is, at the time and in the light of the
65 circumstances under which it is made, false or misleading in any
66 material respect.

67 Sec. 6. Section 36b-80 of the general statutes, as amended by section
68 9 of public act 99-38, is repealed and the following is substituted in lieu
69 thereof:

70 No person shall make or cause to be made verbally or in any
71 document filed with the commissioner or in any proceeding,
72 investigation or examination under sections 36b-60 to 36b-80, inclusive,

73 any statement which is, at the time and in the light of the
74 circumstances under which it is made, false or misleading in any
75 material respect.

76 Sec. 7. (NEW) No licensee shall, in connection with the activity for
77 which such person is licensed: (1) Employ any device, scheme or
78 artifice to defraud; (2) make any untrue statement of a material fact or
79 omit to state a material fact necessary in order to make the statements
80 made, in the light of the circumstances under which they are made, not
81 misleading, or (3) engage in any act, practice, or course of business
82 which operates or would operate as a fraud or deceit upon any person.

83 Sec. 8. Section 3 of public act 99-158 is repealed and the following is
84 substituted in lieu thereof:

85 No person shall make or cause to be made verbally or in any
86 document filed with the commissioner or in any proceeding,
87 investigation or examination under this title, any statement which is, at
88 the time and in the light of the circumstances under which it is made,
89 false or misleading in any material respect.

90 Sec. 9. This act shall take effect from its passage.

BA Committee Vote: Yea 18 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Revenue Impact

Affected Agencies: Department of Banking (Banking Fund)

Municipal Impact: None

Explanation

State Impact:

There may be a revenue impact to the Department of Banking’s Special Fund as a result of the passage of this bill. There could be a revenue gain as bill allows the banking commissioner to impose civil penalties on first and second mortgage lenders and brokers who fail to perform agreements with borrowers. There could be a revenue loss for the Banking Fund, as the bill gives the commissioner the authority to refuse to renew licenses of second mortgage lenders and brokers, who break oral agreements. License renewals are a source of revenue for the Banking Fund. The amount of loss cannot be quantified.

The bill also requires the banking commissioner to consider other factors aside from asset size in the annual cost assessment for the examination and monitoring of foreign banks. The department will continue to assess for all costs of regulatory activities.

OLR Bill Analysis

sHB 5017

***AN ACT CONCERNING THE ENFORCEMENT AND EXAMINATION
AUTHORITY OF THE BANKING COMMISSIONER.***

SUMMARY:

This bill generally prohibits licensees under the banking law from engaging in fraudulent conduct and clarifies various prohibitions on false or misleading statements. It also requires the banking commissioner to consider more factors when annually assessing foreign bank branches or agencies in Connecticut. It lets the commissioner (1) impose civil penalties on mortgage lenders and brokers who fail to perform an agreement with a borrower and (2) revoke, suspend, or refuse to renew licenses of second mortgage lenders or brokers who break oral agreements. Finally, the bill gives sales finance companies more flexibility over where they keep their records.

EFFECTIVE DATE: Upon passage

FRAUDULENT CONDUCT

The bill generally prohibits any licensee under the banking law, in connection with the licensed activities, from (1) using any device, scheme, or artifice to defraud; (2) making any untrue statement of material fact or omitting a material fact needed to make the statements not misleading, in light of the circumstances; or (3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon anyone. The prohibitions are the same as those in the securities law for fraudulent conduct connected to the offer and sale of securities.

VERBAL FALSE OR MISLEADING STATEMENTS

The bill also makes it clear that prohibitions against making false or

misleading statements in any documents filed with the banking commissioner or in any proceeding, investigation, or examination under these laws also apply to such verbal statements.

FOREIGN BANKS' ASSESSMENTS

The bill adds to the items the banking commissioner must consider when he determines the annual assessment for a foreign bank that has established a state branch or agency in Connecticut. The annual assessments on banks contribute to paying for the Banking Department's regulatory activities. Currently, the commissioner must take into account only the assets of the state branches or agencies located in Connecticut. Items the bill adds are:

1. the foreign bank's assets relative to those of other foreign banks with state branches or agencies here (still considering only the assets located in the state);
2. the cost of any examination the commissioner conducts under the foreign bank law;
3. the assessment amount allocated to each Connecticut-chartered bank and credit union; and
4. any other factor the commissioner deems appropriate to the foreign bank law's administration.

MORTGAGE LENDER AND BROKER NONPERFORMANCE

The bill allows the commissioner to impose the same civil penalties on first and second mortgage lenders and brokers who fail to perform an agreement with a borrower that he can already impose for other types of offenses. It also makes a secondary mortgage lender's or broker's failure to perform any agreement, instead of only a written agreement, grounds for revoking, suspending or refusing to renew the license, consistent with existing law for first mortgage lenders.

SALES FINANCE COMPANY RECORDS

The bill gives sales finance companies an option to make their books

and records available at the business location specified in their license within five business days after the commissioner requests it, instead of always having to keep them there.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 18 Nay 0