



# House of Representatives

## File No. 631

General Assembly

February Session, 2000

**(Reprint of File No. 120)**

Substitute House Bill No. 5017  
As Amended by House  
Amendment Schedule "A"

Approved by the Legislative Commissioner  
April 14, 2000

### ***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2 repealed and the following is substituted in lieu thereof: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16 amended by section 29 of public act 99-36, is repealed and the  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 Section 36a-517 of the general statutes is repealed and the  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 orally 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 orally 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 orally 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 July 1, 2000.

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:

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**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 the 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.

House “ A “ is technical in nature and has no fiscal impact.

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**OLR Amended Bill Analysis**

sHB 5017 (as amended by House "A")\*

**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.

\*House Amendment "A" makes the prohibition on false or misleading statements apply to "oral" instead of "verbal" statements as in the original bill and changes the effective date from upon passage to July 1, 2000.

EFFECTIVE DATE: July 1, 2000

**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 a 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.

## **ORAL 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 oral 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.

## **BACKGROUND**

### ***Legislative History***

On March 23, the House referred the bill to the Judiciary Committee, which reported it out favorably with no changes on March 29.

## **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute  
Yea 18 Nay 0

Judiciary Committee

Joint Favorable Report  
Yea 27 Nay 0