



Senate

General Assembly

File No. 135

January Session, 2003

Senate Bill No. 984

Senate, April 1, 2003

The Committee on Banks reported through SEN. FINCH of the 22nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING DEPARTMENT OF BANKING LICENSEES.

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

1 Section 1. Section 36a-519 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 In any transaction subject to part III of chapter 669, no mortgage
4 lender licensee shall impose any charge as a penalty for the
5 prepayment of principal of a secondary mortgage loan which exceeds
6 five per cent of the balance prepaid, provided no penalty shall be
7 imposed for any prepayment occurring more than three years after the
8 date of such loan.

9 Sec. 2. Subsection (b) of section 36a-521 of the general statutes is
10 repealed and the following is substituted in lieu thereof (*Effective*
11 *October 1, 2003*):

12 (b) Any mortgage lender who fails to comply with the provisions of
13 this section shall be liable to the borrower in an amount equal to the

14 sum of: (1) The amount by which the total of all [loan fees, points,
15 commissions, transaction fees, other] prepaid finance charges [, and
16 secondary mortgage broker's fees and commissions] exceeds eight per
17 cent of the principal amount of the loan; (2) eight per cent of the
18 principal amount of the loan or two thousand five hundred dollars,
19 whichever is less; and (3) the costs incurred by the borrower in
20 bringing an action under this section, including reasonable attorney's
21 fees, as determined by the court, provided no such mortgage lender
22 shall be liable for more than the amount specified in this subsection in
23 a secondary mortgage loan transaction involving more than one
24 borrower.

25 Sec. 3. Subsection (d) of section 36a-581 of the general statutes is
26 repealed and the following is substituted in lieu thereof (*Effective*
27 *October 1, 2003*):

28 (d) [No change shall be made in] A licensee shall not change the
29 location specified [in the application without filing] on its license
30 unless, prior to such change in location, the licensee files an application
31 with the commissioner for change in location accompanied by the
32 [applicable] location transfer fee and receives the approval of the
33 commissioner. [No change shall be made in the type of facility without
34 filing a new application for licensure of the changed facility
35 accompanied by the applicable application fee. No change shall be
36 made to the] A licensee of a limited facility shall not change its
37 approved days and hours of operation [specified in any application
38 without the prior written approval of the commissioner] unless, prior
39 to any such change in days or hours of operation, the licensee files an
40 application with and receives the approval of the commissioner.

41 Sec. 4. Section 36a-597 of the general statutes is repealed and the
42 following is substituted in lieu thereof (*Effective October 1, 2003*):

43 No person shall engage in the business of issuing Connecticut
44 payment instruments, or engage in the business of money
45 transmission, without first obtaining a license from the commissioner
46 as provided in section 36a-600. No person shall engage in such

47 business or in the business of selling Connecticut payment instruments
48 as an agent or subagent, except as an agent or subagent of a licensee
49 [as provided in] or an entity or a person exempt under section 36a-609,
50 as amended by this act, and in accordance with section 36a-607, as
51 amended by this act.

52 Sec. 5. Section 36a-602 of the general statutes is repealed and the
53 following is substituted in lieu thereof (*Effective October 1, 2003*):

54 (a) As a condition for the issuance and retention of the license,
55 applicants for a license and licensees shall file with the commissioner a
56 [corporate] surety bond, [in a form satisfactory to the commissioner
57 and] the form of which shall be approved by the Attorney General,
58 issued by a bonding company or insurance company authorized to do
59 business in this state. The bond shall be in favor of the commissioner,
60 [shall remain in place for] cover claims that arise during the period the
61 license remains in full force and effect and the succeeding two years
62 after [such licensee ceases to engage in business in this state, and shall]
63 such license has been surrendered, revoked or suspended or has
64 expired, in accordance with the provisions of sections 36a-595 to 36a-
65 610, inclusive, and be in the principal sum of (1) three hundred
66 thousand dollars for any applicant and any licensee that engages in the
67 business of issuing Connecticut payment instruments with an average
68 daily balance of outstanding Connecticut payment instruments during
69 the two previous reporting quarters of three hundred thousand dollars
70 or less or any licensee that engages in the business of money
71 transmission with an average weekly amount of money or equivalent
72 thereof transmitted during the two previous reporting quarters of one
73 hundred fifty thousand dollars or less; (2) five hundred thousand
74 dollars for any licensee that engages in the business of issuing
75 Connecticut payment instruments with an average daily balance of
76 outstanding Connecticut payment instruments during the two
77 previous reporting quarters of greater than three hundred thousand
78 dollars but less than five hundred thousand dollars or any licensee that
79 engages in the business of money transmission with an average weekly
80 amount of money equivalent thereof transmitted during the two

81 previous reporting quarters of greater than one hundred fifty thousand
82 dollars but less than two hundred fifty thousand dollars; and (3) one
83 million dollars for any licensee that engages in the business of issuing
84 Connecticut payment instruments with an average daily balance of
85 outstanding Connecticut payment instruments during the two
86 previous reporting quarters equal to or greater than five hundred
87 thousand dollars or any licensee that engages in the business of money
88 transmission with an average weekly amount of money or equivalent
89 thereof transmitted during the two previous reporting quarters of two
90 hundred fifty thousand dollars or greater. The proceeds of the bond,
91 even if commingled with other assets of the licensee, shall be deemed
92 by operation of law to be held in trust for the benefit of any claimants
93 against the licensee to serve the faithful performance of the obligations
94 of the licensee with respect to the receipt, handling, transmission or
95 payment of money in connection with the sale and issuance of
96 payment instruments or transmission of money in the event of the
97 bankruptcy of the licensee, and shall be immune from attachment by
98 creditors or judgment creditors. The commissioner may proceed on
99 such bond against the principal or surety thereon, or both, to collect
100 any civil penalty imposed upon the licensee pursuant to subsection (a)
101 of section 36a-50. In the event a license has been surrendered, revoked
102 or suspended or has expired, in accordance with the provisions of
103 sections 36a-595 to 36a-610, inclusive, the commissioner, in the
104 commissioner's discretion, may lower the required principal sum of
105 the bond based on the licensee's level of business and outstanding
106 Connecticut payment instruments.

107 (b) In lieu of all or part of the principal sum of such [corporate]
108 surety bonds, applicants for a license and licensees may invest such
109 sum as provided in this subsection. The book or market value,
110 whichever is lower, of such investments shall be equal to the amount
111 of the bond required by subsection (a) of this section less the amount of
112 the bond filed with the commissioner by the applicant or licensee. Such
113 investments may be:

114 (1) Deposits with such banks as such applicants or licensees may

115 designate and the commissioner may approve, and in accordance with
116 such regulations as the commissioner may adopt; or

117 (2) Interest-bearing bills, notes, bonds, debentures or other
118 obligations issued or guaranteed by (A) the United States or any of its
119 agencies or instrumentalities, or (B) any state, or any agency,
120 instrumentality, political subdivision, school district or legally
121 constituted authority of any state if such investment is of prime
122 quality.

123 (c) The investments provided for in subsection (b) of this section
124 shall secure the same obligation as would a [corporate] surety bond
125 filed under this section. As long as a licensee continues business in the
126 ordinary course, it shall be permitted to collect interest on such
127 investments and at any time to exchange, examine, and compare such
128 investments. The investments made pursuant to this section, even if
129 commingled with other assets of the licensee, shall be deemed by
130 operation of law to be held in trust for the benefit of any claimants
131 against the licensee to serve the faithful performance of the obligations
132 of the licensee with respect to the receipt, handling, transmission or
133 payment of money in connection with the sale and issuance of
134 Connecticut payment instruments or transmission of money in the
135 event of the bankruptcy of the licensee, and shall be immune from
136 attachment by creditors or judgment creditors.

137 Sec. 6. Section 36a-607 of the general statutes is repealed and the
138 following is substituted in lieu thereof (*Effective October 1, 2003*):

139 (a) A licensee may conduct its business at one or more locations
140 within this state as follows:

141 (1) The business may be conducted by the licensee or through or by
142 means of such agents and subagents as the licensee may periodically
143 designate or appoint.

144 (2) No license under sections 36a-595 to 36a-610, inclusive, shall be
145 required of any agent or subagent of a licensee.

146 (3) Each agent and subagent shall, from the moment of receipt, hold
147 the proceeds of a sale or delivery of a licensee's Connecticut payment
148 instruments in trust for the benefit of such licensee or of an agent of the
149 licensee on behalf of such licensee.

150 (4) A licensee shall be liable for the loss caused to any purchaser or
151 holder of the licensee's Connecticut payment instruments by the failure
152 of an agent or subagent of the licensee to forward to the licensee the
153 amount due from the proceeds of a sale or delivery of the licensee's
154 Connecticut payment instruments, or money received for transmission.

155 (b) For purposes of subsection (a) of this section, a licensee shall
156 include any entity or person exempt under section 36a-609, as
157 amended by this act.

158 Sec. 7. Section 36a-609 of the general statutes is repealed and the
159 following is substituted in lieu thereof (*Effective October 1, 2003*):

160 The provisions of sections [36a-595 to 36a-610] 36a-597 to 36a-606a,
161 inclusive, as amended by this act, shall not apply to:

162 (1) [Except in its capacity as an agent of a licensee, any] Any
163 federally insured federal bank, out-of-state bank, [Connecticut credit
164 union,] federal credit union or out-of-state credit union, provided such
165 institution does not issue or sell Connecticut payment instruments or
166 transmit money through an agent or subagent which is not a federally
167 insured bank, out-of-state bank, Connecticut credit union, federal
168 credit union or out-of-state credit union;

169 (2) Any Connecticut bank or Connecticut credit union;

170 [(2)] (3) The United States Postal Service; and

171 [(3)] (4) A person whose activity is limited to the electronic funds
172 transfer of governmental benefits for or on behalf of a federal, state or
173 other governmental agency, quasi-governmental agency or
174 government sponsored enterprise.

175 Sec. 8. Subsection (d) of section 36a-684 of the general statutes is
176 repealed and the following is substituted in lieu thereof (*Effective*
177 *October 1, 2003*):

178 (d) (1) In carrying out enforcement activities under this section, the
179 commissioner, in cases where an annual percentage rate or finance
180 charge was inaccurately disclosed, shall notify the creditor of such
181 disclosure error and may require the creditor to make an adjustment to
182 the account of the person to whom credit was extended, to assure that
183 such person will not be required to pay a finance charge in excess of
184 the finance charge actually disclosed or the dollar equivalent of the
185 annual percentage rate actually disclosed, whichever is lower. For the
186 purposes of this subsection, except where such disclosure error
187 resulted from a wilful violation which was intended to mislead the
188 person to whom credit was extended, in determining whether a
189 disclosure error has occurred and in calculating any adjustment, (A)
190 the commissioner shall apply (i) with respect to the annual percentage
191 rate, a tolerance of one-quarter of one per cent more or less than the
192 actual rate, determined without regard to Section 107(c) of the
193 Consumer Credit Protection Act (15 USC 1606(c)), and (ii) with respect
194 to the finance charge, a corresponding numerical tolerance as
195 generated by the tolerance provided under this subsection for the
196 annual percentage rate; except that (B) with respect to transactions
197 consummated after March 31, 1982, the commissioner shall apply (i)
198 for transactions that have a scheduled amortization of ten years or less,
199 with respect to the annual percentage rate, a tolerance not to exceed
200 one-quarter of one per cent more or less than the actual rate,
201 determined without regard to Section 107(c) of the Consumer Credit
202 Protection Act (15 USC 1606(c)), but in no event a tolerance of less than
203 the tolerances allowed under Section 107(c) (15 USC 1606(c)), (ii) for
204 transactions that have a scheduled amortization of more than ten
205 years, with respect to the annual percentage rate, only such tolerances
206 as are allowed under Section 107(c) of the Consumer Credit Protection
207 Act (15 USC 1606(c)), and (iii) for all transactions, with respect to the
208 finance charge, a corresponding numerical tolerance as generated by
209 the tolerances provided under this subsection for the annual

210 percentage rate.

211 (2) The commissioner shall require such an adjustment when the
212 commissioner determines that such disclosure error resulted from a
213 clear and consistent pattern or practice of violations, from gross
214 negligence, or from a wilful violation which was intended to mislead
215 the person to whom the credit was extended. Notwithstanding the
216 preceding sentence, except where such disclosure error resulted from a
217 wilful violation which was intended to mislead the person to whom
218 credit was extended, the commissioner need not require such an
219 adjustment if the commissioner determines that such disclosure error:
220 (A) Resulted from an error involving the disclosure of a fee or charge
221 that would otherwise be excludable in computing the finance charge,
222 including but not limited to, violations involving the disclosures
223 described in Sections 106(b), (c) and (d) of the Consumer Credit
224 Protection Act (15 USC 1605(b), (c) and (d)), in which event the
225 commissioner may require such remedial action as the commissioner
226 determines to be equitable, except that for transactions consummated
227 after March 31, 1982, such an adjustment shall be ordered for
228 violations of Section 106(b) (15 USC 1605(b)); (B) involved a disclosed
229 amount which was ten per cent or less of the amount that should have
230 been disclosed and (i) in cases where the error involved a disclosed
231 finance charge, the annual percentage rate was disclosed correctly, and
232 (ii) in cases where the error involved a disclosed annual percentage
233 rate, the finance charge was disclosed correctly; in which event the
234 commissioner may require such adjustment as the commissioner
235 determines to be equitable; (C) involved a total failure to disclose
236 either the annual percentage rate or the finance charge, in which event
237 the commissioner may require such adjustment as the commissioner
238 determines to be equitable; or (D) resulted from any other unique
239 circumstance involving clearly technical and nonsubstantive disclosure
240 violations that do not adversely affect information provided to the
241 consumer and that have not misled or otherwise deceived the
242 consumer. In the case of other such disclosure errors, the commissioner
243 may require such an adjustment.

244 (3) Notwithstanding subdivision (2) of this subsection, no
245 adjustment shall be ordered: (A) If it would have a significantly
246 adverse impact upon the safety or soundness of the creditor, but in any
247 such case, the commissioner may require a partial adjustment in an
248 amount which does not have such an impact except that with respect
249 to any transaction consummated after May 18, 1981, the commissioner
250 shall require the full adjustment, but permit the creditor to make the
251 required adjustment in partial payments over an extended period of
252 time which the commissioner considers to be reasonable, (B) if the
253 amount of the adjustment would be less than one dollar, except that if
254 more than one year has elapsed since the date of the violation, the
255 commissioner may require that such amount be paid to the
256 commissioner, (C) except where such disclosure error resulted from a
257 wilful violation which was intended to mislead the person to whom
258 credit was extended, in the case of an open-end credit plan, more than
259 two years after the violation, or in the case of any other extension of
260 credit, as follows: (i) With respect to creditors that have been examined
261 by the commissioner, except in connection with violations arising from
262 practices identified in the current examination and only in connection
263 with transactions that are consummated after the date of the
264 immediately preceding examination, except that where practices
265 giving rise to violations identified in earlier examinations have not
266 been corrected, adjustments for those violations shall be required in
267 connection with transactions consummated after the date of the
268 examination in which such practices were first identified; (ii) with
269 respect to creditors that have not been examined by the commissioner,
270 except in connection with transactions that are consummated after
271 May 10, 1978; and (iii) in no event after the later of (I) the expiration of
272 the life of the credit extension, or (II) two years after the agreement to
273 extend credit was consummated.

274 (4) In addition to the enforcement powers authorized by the
275 provisions of this section and section 36a-50, the commissioner may
276 order any creditor to make an adjustment as provided in subdivision
277 (1) of this subsection. After such an order is issued, the persons named
278 therein may, within fourteen days after receipt of the order, file a

279 written request for a hearing. The hearing shall be held in accordance
280 with the provisions of chapter 54.

281 (5) Except as otherwise specifically provided in this subsection and
282 notwithstanding any other provision of law, the commissioner may
283 not require a creditor to make dollar adjustments for errors in any
284 requirements under the Consumer Credit Protection Act (15 USC 1601
285 et seq.), except with regard to the requirements of Section 165 of the
286 Consumer Credit Protection Act (15 USC 1666d).

287 (6) A creditor shall not be subject to an order to make an adjustment,
288 if within sixty days after discovering a disclosure error, whether
289 pursuant to a final written examination report or through the creditor's
290 own procedures, the creditor notifies the person concerned of the error
291 and adjusts the account so as to assure that such person will not be
292 required to pay a finance charge in excess of the finance charge
293 actually disclosed or the dollar equivalent of the annual percentage
294 rate actually disclosed, whichever is lower.

295 [(7) Notwithstanding any other provision of law, the commissioner
296 shall require an adjustment for an annual percentage rate disclosure
297 error that exceeds a tolerance of one-quarter of one per cent less than
298 the actual rate, determined without regard to Section 107(c) of the
299 Consumer Credit Protection Act (15 USC 1606(c)), with respect to any
300 transaction consummated between January 1, 1977, and May 18, 1981.]

301 Sec. 9. Subsection (b) of section 36a-746f of the general statutes is
302 repealed and the following is substituted in lieu thereof (*Effective*
303 *October 1, 2003*):

304 (b) If a borrower purchases from a lender an individual or group
305 credit life, accident, health, disability or unemployment insurance
306 product, such borrower shall have the right to cancel such insurance
307 product at any time and receive a refund of any unearned premiums
308 paid. [Notice] Commencing October 1, 2003, the notice of the right to
309 cancel shall be [sent] in not less than twelve-point type and sent
310 separately by mail to such borrower by the lender no earlier than ten

311 days and no later than thirty days after consummation. Such notice
312 shall also disclose the type of insurance product purchased, the cost of
313 such product and the procedure for canceling such product.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>

BA *Joint Favorable*

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:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Banking Dept.	BF - Revenue Loss	1,000	1,000
Attorney General	GF - None	None	None

Note: BF=Banking Fund; GF=General Fund

Municipal Impact: None

Explanation

The bill results in a revenue loss by exempting from the \$1,000 license fee banks currently licensed under the money transmitter statutes. This exemption would apply to one bank.

It also makes various other changes including requiring the Attorney General to approve a surety bond form for use by banks seeking a license. These changes do not result in a fiscal impact to the state.

OLR Bill Analysis

SB 984

AN ACT CONCERNING DEPARTMENT OF BANKING LICENSEES**SUMMARY:**

This bill (1) makes it clear that a prohibition on charging excessive prepayment penalties applies specifically to secondary mortgage lenders; (2) for purposes of calculating a secondary mortgage lender's liability for imposing excessive prepaid finance charges, adopts a general definition of prepaid finance charges that, among other things, incorporates items specified in federal regulations; (3) clarifies when check cashing facilities must obtain the banking commissioner's approval for certain administrative activities; (4) updates bonding requirements under the Money Transmission Act; and (5) requires the notice that lenders send notifying borrowers of their right to cancel certain insurance products purchased during the high-cost home loan process to be in at least 12-point type and mailed separately. The bill also deletes obsolete language and makes technical changes.

EFFECTIVE DATE: October 1, 2003

PREPAID FINANCE CHARGES

The bill replaces a list of specific prepaid finance charges with the general statutory definition of prepaid finance charges, that includes charges specified in federal regulations, plus fees and commissions relating to the lender's sale of certain insurance and other products during the mortgage process, in computing the liability of a secondary mortgage lender who fails to comply with the statutory limitation on such charges.

CHECK CASHING FACILITIES

The bill requires a check cashing facility to file an application and get the banking commissioner's approval before changing the location specified on its license. Current law prohibits check cashing facilities from changing the location specified on their license application without filing an application to do so with the commissioner, but it does not require them to obtain his approval. The bill eliminates the

prohibition on a check cashing facility changing from a general to a limited or a limited to a general facility without filing a new application for the changed facility's license and the applicable application fee.

Current law prohibits check cashing facilities from changing the days and hours specified on their application without the commissioner's prior written approval. The bill limits this prohibition to limited facility licensees and makes it clear that they must file an application seeking approval. (A limited check cashing facility is a mobile facility providing payroll check cashing services on an employer's property on up to two days per week.)

MONEY TRANSMITTERS

The bill makes it clear that entities exempt from the Money Transmission Act are not subject to the Act's prohibition on unlicensed people issuing or selling Connecticut payment instruments or engaging in money transmission activities. It applies requirements regarding conduct of business (such as holding sale proceeds and liability for loss) by a licensee's agent or subagent to people and entities otherwise exempt from the act. These include banks, credit unions, and the U.S. Postal Service. The bill also expands the exemption to include Connecticut banks.

The bill allows the bond required of licensees to be any form of surety bond rather than only a corporate surety bond and requires the attorney general to approve its form rather than the commissioner. It clarifies that the bond covers claims arising during the period that the license is in full force and effect and for two years after it has been surrendered, revoked, suspended, or has expired. Current law states only that the bond remains in place for two years after the licensee stops doing business in Connecticut. If a license is surrendered, revoked, suspended, or has expired, the bill allows the commissioner to lower the bond's required principal sum from the statutorily specified levels (which are \$300,000, \$500,000, or \$1 million, depending on level of business) based on the licensee's level of business and outstanding Connecticut payment instruments.

CONNECTICUT ABUSIVE HOME LOAN LENDING PRACTICES ACT

Current law requires lenders making high-cost home loans to send notice to borrowers who buy credit life, accident, health, disability, or unemployment insurance products from them of the right to cancel the insurance product at any time and receive a refund of any unearned premiums paid. The bill requires the notice, starting October 1, 2003, to be in at least 12-point type and to be sent separately.

COMMITTEE ACTION

Banks Committee

Joint Favorable Report
Yea 19 Nay 0