



House of Representatives

File No. 861

General Assembly

January Session, 2013

(Reprint of File No. 284)

Substitute House Bill No. 6339
As Amended by House Amendment Schedules
"A" and "B"

Approved by the Legislative Commissioner
May 24, 2013

**AN ACT CONCERNING BANKS, LOAN PRODUCTION OFFICES,
EXCHANGE FACILITATORS, PUBLIC DEPOSITS AND REAL
PROPERTY TAX LIENS.**

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

1 Section 1. Subsection (c) of section 36a-21 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2013*):

4 (c) No director, officer, employee or agent of any Connecticut bank,
5 [or] Connecticut credit union or licensee under section 36a-380 or 36a-
6 628 shall disclose without the prior written consent of the
7 commissioner any information contained in an examination report
8 about such bank, [or] credit union [,] or licensee which information is
9 not otherwise a matter of public record.

10 Sec. 2. Section 36a-127 of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective from passage*):

12 A Connecticut bank may merge with one or more of its affiliates

13 that are not banks or out-of-state banks, provided the resulting
14 institution is a Connecticut bank. Such merger shall be effected in
15 accordance with the provisions of section 36a-125 as if such affiliate
16 were a constituent bank, except, with respect to any provision therein
17 governing corporate procedure, including the rights of dissenting
18 members or shareholders who assert existing appraisal rights, such
19 affiliate shall comply with the laws of the state or other jurisdiction
20 under which such affiliate is organized. Any such affiliate shall also
21 comply with other applicable laws of the state or other jurisdiction
22 under which such affiliate is organized concerning such mergers.

23 Sec. 3. Subsection (o) of section 36a-145 of the general statutes is
24 repealed and the following is substituted in lieu thereof (*Effective from*
25 *passage*):

26 (o) With the approval of the commissioner, a Connecticut bank may
27 establish a loan production office in or outside this state.

28 Sec. 4. Subsection (a) of section 36a-262 of the general statutes is
29 repealed and the following is substituted in lieu thereof (*Effective from*
30 *passage*):

31 (a) Except as otherwise provided in this section, the total direct or
32 indirect liabilities of any one obligor that are not fully secured,
33 however incurred, to any Connecticut bank, exclusive of such bank's
34 investment in the investment securities of such obligor, shall not
35 exceed at the time incurred fifteen per cent of the equity capital and
36 reserves for loan and lease losses of such bank. The total direct or
37 indirect liabilities of any one obligor that are fully secured, however
38 incurred, to any Connecticut bank, exclusive of such bank's investment
39 in the investment securities of such obligor, shall not exceed at the time
40 incurred ten per cent of the equity capital and reserves for loan and
41 lease losses of such bank, provided this limitation shall be separate
42 from and in addition to the limitation on liabilities that are not fully
43 secured. Notwithstanding any provision of this subsection, the
44 limitation on the liabilities of any one obligor shall take into account

45 the credit exposure to such obligor arising from a derivative
46 transaction. The commissioner shall have the authority to establish the
47 method for determining the credit exposure and the extent to which
48 the credit exposure shall be taken into account. As used in this
49 subsection, "derivative transaction" includes any transaction that is a
50 contract, agreement, swap, warrant, note or option that is based, in
51 whole or in part, on the value of any interest in, or any quantitative
52 measure or the occurrence of any event [leading] relating to, one or
53 more commodities, securities, currencies, interest or other rates,
54 indices or other assets. The commissioner may adopt regulations in
55 accordance with the provisions of chapter 54 establishing the method
56 for determining credit exposure to derivative transactions and the
57 extent to which the credit exposure shall be taken into account. For
58 purposes of this section, a liability shall be considered to be fully
59 secured if it is secured by readily marketable collateral having a
60 market value, as determined by reliable and continuously available
61 price quotations, at least equal to the amount of the liability. For
62 purposes of determining the limitations of this section, in computing
63 the liabilities of an obligor, a liability is incurred at the time of the
64 closing of the transaction, unless such closing is preceded by a legally
65 binding written commitment to enter into the transaction, in which
66 case such liability is incurred at the time of commitment and is net of
67 any liabilities of the obligor to such bank that will be paid with the
68 proceeds of the commitment at the time of closing. The limitations
69 provided for in this subsection may be exceeded for a period of time
70 not to exceed six hours if at the closing of any transaction at which
71 such obligor incurs such liabilities to a Connecticut bank in excess of
72 such limitations, such bank immediately assigns or participates out to
73 one or more other persons an amount that constitutes not less than the
74 excess over the applicable limitation. Obligations as endorser or
75 guarantor of negotiable or nonnegotiable installment consumer paper
76 which carry an agreement to repurchase on default, unless the bank's
77 sole recourse is to an agreed reserve held by it, in which case the
78 liability shall be excluded, a full recourse endorsement or an
79 unconditional guarantee by the person, partnership, association or

80 corporation transferring the same, shall be subject under this section to
81 a limitation of fifteen per cent of the bank's equity capital and reserves
82 for loan and lease losses in addition to the applicable limitations of this
83 section with respect to the makers of such obligations; provided, upon
84 certification by an officer of the bank designated for that purpose by
85 the governing board that the responsibility of each maker of such
86 obligations has been evaluated and the bank is relying primarily upon
87 each such maker for the payment of such obligations, the limitations of
88 this section as to the obligations of each maker shall be the sole
89 applicable loan limitation; and provided such certification shall be in
90 writing and shall be retained as part of the records of such bank.

91 Sec. 5. (NEW) (*Effective October 1, 2013*) As used in this section and
92 sections 6 to 11, inclusive, of this act:

93 (1) "Affiliated with" means that a person, directly or indirectly,
94 through one or more intermediaries, controls, is controlled by or is
95 under common control with another specified person;

96 (2) "Client" means a taxpayer with whom an exchange facilitator
97 enters into an agreement, as described in subparagraph (B) of
98 subdivision (3) of this section;

99 (3) "Exchange facilitator" means a person who: (A) Maintains an
100 office in this state for the purpose of soliciting business facilitating the
101 exchange of like-kind property, as described in subparagraph (B) of
102 this subdivision; or (B) for a fee (i) facilitates an exchange of like-kind
103 property by entering into an agreement with a client pursuant to
104 which the exchange facilitator acquires from such client the contractual
105 rights to sell such client's relinquished property located in this state
106 and transfer a replacement property to such client as a qualified
107 intermediary, within the meaning of 26 CFR 1.1031(k)-1(g)(4), (ii)
108 enters into an agreement with a client to take title to a property in this
109 state as an exchange accommodation titleholder, as defined in Revenue
110 Procedure 2000-37 issued by the Internal Revenue Service, or (iii)
111 enters into an agreement with a client to act as a qualified trustee or

112 qualified escrow holder, as such terms are defined in 26 CFR 1.1031(k)-
113 1(g)(3); but shall not include:

114 (I) Any financial institution, as defined in subdivision (6) of this
115 section, that is acting solely as a depository for exchange funds or
116 solely as a qualified escrow holder or qualified trustee, as such terms
117 are defined in 26 CFR 1.1031(k)-1(g)(3), and is not otherwise facilitating
118 exchanges in accordance with this subparagraph;

119 (II) An individual or entity that is teaching seminars or classes or
120 giving other presentations to attorneys, accountants, real estate
121 professionals, tax professionals or other professionals where the
122 primary purpose is to teach about tax deferred exchanges or to train
123 such professionals to act as exchange facilitators, or any individual or
124 entity advertising for such seminars, classes or other presentations; or

125 (III) An entity that is wholly owned by an exchange facilitator or by
126 a person representing the exchange facilitator and used by such
127 exchange facilitator or person to facilitate exchanges or take title to
128 property in this state as an exchange accommodation titleholder;

129 (4) "Exchange funds" means the funds received by an exchange
130 facilitator from or on behalf of a client for the purpose of facilitating an
131 exchange of like-kind property;

132 (5) "Fee" means compensation of any nature, direct or indirect,
133 monetary or in-kind, that is received by a person or related person, as
134 defined in Section 267(b) or Section 707(b) of the Internal Revenue
135 Code of 1986, or any subsequent corresponding internal revenue code
136 of the United States, as amended from time to time, for any services
137 relating or incidental to the exchange of like-kind property under
138 Section 1031 of said Internal Revenue Code;

139 (6) "Financial institution" means any bank, federal credit union,
140 Connecticut credit union, savings and loan holding company, savings
141 and loan association, savings bank, trust company or trust bank, as
142 such terms are defined in section 36a-2 of the general statutes,

143 chartered under the laws of this state or the United States whose
144 accounts are insured by the full faith and credit of the United States of
145 America, the Federal Deposit Insurance Corporation, the National
146 Credit Union Share Insurance Fund or other similar or successor
147 programs;

148 (7) "Person" means a natural person, cooperative association, limited
149 liability company, firm, partnership, corporation or other legal entity,
150 and includes any agent or employee of any such person;

151 (8) "Pool" means to (A) aggregate exchange funds of multiple
152 taxpayers for investment purposes to achieve common investment
153 goals and efficiencies, and (B) ensure that such exchange funds are
154 readily identifiable as to each taxpayer for whom they are held,
155 through an accounting or subaccounting system;

156 (9) "Prudent investor standard" means the prudent investor rule, as
157 set forth by the Connecticut Uniform Prudent Investor Act, or as
158 otherwise defined by part VII of chapter 802c of the general statutes;
159 and

160 (10) "Publicly traded company" means a corporation whose
161 securities are publicly traded on the New York Stock Exchange, the
162 American Stock Exchange, or the national market system of the
163 National Association of Securities Dealers Automated Quotation
164 System established pursuant to the Securities Exchange Act of 1934,
165 and the subsidiaries of any such corporation.

166 Sec. 6. (NEW) (*Effective October 1, 2013*) An exchange facilitator shall
167 notify each client whose relinquished property, as defined in 26 CFR
168 1.1031(k)-1(a), is located in this state or whose replacement property,
169 as defined in 26 CFR 1.1031(k)-1(a), held under a qualified exchange
170 accommodation agreement is located in this state, of any change in
171 control of the exchange facilitator. The exchange facilitator shall notify
172 each such client not later than ten business days after the effective date
173 of such change in control by facsimile, electronic mail transmission or
174 first class mail and by posting such notice of change of control on the

175 exchange facilitator's Internet web site for a period ending not earlier
176 than ninety days after the change in control. Such notification shall set
177 forth the name, address and other contact information of the persons
178 to whom control was transferred. Notwithstanding the provisions of
179 this section, if the exchange facilitator is a publicly traded company
180 and remains a publicly traded company after a change in control, the
181 publicly traded company shall not be required to notify its existing
182 clients of such change in control. For purposes of this section, "change
183 in control" means any transfer or transfers within a twelve-month
184 period of more than fifty per cent of the assets or ownership interests,
185 directly or indirectly, of the exchange facilitator.

186 Sec. 7. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all
187 times shall:

188 (1) Maintain a fidelity bond in an amount of not less than one
189 million dollars executed by an insurer authorized to do business in this
190 state;

191 (2) Deposit all exchange funds in a separately identified account, as
192 defined in 26 CFR 1.468B-6(c)(2)(ii)(A), and provide that any
193 withdrawals from such separately identified account require the
194 written authorizations of both the client and the exchange facilitator.
195 Deliver authorization for withdrawals by any commercially reasonable
196 means, including (A) the client's delivery to the exchange facilitator of
197 the client's authorization to disburse exchange funds and the exchange
198 facilitator's delivery to the depository institution of the exchange
199 facilitator's sole authorization to disburse exchange funds, or (B)
200 delivery to the depository institution of both the client's and the
201 exchange facilitator's authorizations to disburse exchange funds; or

202 (3) Deposit all exchange funds in a qualified escrow or qualified
203 trust, as such terms are defined in 26 CFR 1.1031(k)-1(g)(3), with a
204 financial institution and provide that any withdrawals from such
205 qualified escrow or qualified trust require the taxpayer's and the
206 exchange facilitator's written authorization.

207 Sec. 8. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all
208 times shall: (1) Maintain an errors and omissions policy of insurance in
209 an amount not less than two hundred fifty thousand dollars executed
210 by an insurer authorized to do business in this state; (2) deposit an
211 amount of cash or securities; or (3) provide irrevocable letters of credit
212 in an amount not less than two hundred fifty thousand dollars.

213 Sec. 9. (NEW) (*Effective October 1, 2013*) The Banking Commissioner
214 may adopt regulations, in accordance with the provisions of chapter 54
215 of the general statutes, to implement the provisions of sections 5 to 12,
216 inclusive, of this act. Any person claiming to have suffered damage by
217 reason of the failure of an exchange facilitator to comply with the
218 provisions of sections 6 to 11, inclusive, of this act may file a claim with
219 the commissioner against the exchange facilitator to recover such
220 damage from (1) the fidelity bond maintained in accordance with
221 subdivision (1) of section 7 of this act, (2) cash or securities deposited
222 in accordance with subdivision (2) of section 8 of this act, (3) letters of
223 credit provided in accordance with subdivision (3) of section 8 of this
224 act, or (4) the errors and omissions policy maintained in accordance
225 with subdivision (1) of section 8 of this act.

226 Sec. 10. (NEW) (*Effective October 1, 2013*) (a) An exchange facilitator
227 shall hold all exchange funds, including money, property, other
228 consideration or instruments received by the exchange facilitator from
229 or on behalf of the client, but not including funds received as the
230 exchange facilitator's compensation, in a manner that provides
231 liquidity and preserves principal. An exchange facilitator shall provide
232 the client with written notification of the manner in which the
233 exchange funds will be invested or deposited and shall deposit or
234 invest exchange funds in investments which meet the prudent investor
235 standard and which satisfy investment goals of liquidity and
236 preservation of principal. Exchange funds may be pooled. For
237 purposes of this section, an exchange facilitator violates the prudent
238 investor standard if:

239 (1) Exchange funds are knowingly commingled by the exchange

240 facilitator with the operating accounts of the exchange facilitator; or

241 (2) Exchange funds are loaned or otherwise transferred to any
242 person or entity affiliated with or related to the exchange facilitator
243 except that this subdivision shall not apply to a transfer made
244 pursuant to the exchange contract (A) for payment of an exchange
245 expense or completion of the acquisition of the replacement property,
246 (B) for depositing exchange funds with a financial institution, or (C) to
247 an exchange accommodation titleholder, a trustee of a qualified trust
248 or a qualified escrow agent.

249 (b) Exchange funds are not subject to execution or attachment on
250 any claim against the exchange facilitator. An exchange facilitator shall
251 not knowingly keep or cause to be kept any money in any financial
252 institution under any name designating the money as belonging to a
253 client of the exchange facilitator unless the money equitably belongs to
254 the client and was actually entrusted to the exchange facilitator by the
255 client.

256 Sec. 11. (NEW) (*Effective October 1, 2013*) No exchange facilitator or,
257 in the case of an exchange facilitator that is an entity, no owner, officer,
258 director or employee of such exchange facilitator, shall knowingly:

259 (1) Make any material misrepresentations concerning any exchange
260 facilitator transaction that are intended to mislead;

261 (2) Pursue a continued or flagrant course of misrepresentation or
262 making false statements through advertising or by any other means;

263 (3) Fail, within a reasonable time, to account for any money or
264 property belonging to another person that may be in the possession or
265 under the control of the exchange facilitator;

266 (4) Engage in any conduct constituting fraudulent or dishonest
267 dealings;

268 (5) Commit any crime related to the exchange facilitation business
269 involving fraud, misrepresentation, deceit, embezzlement,

270 misappropriation of funds, robbery or other theft of property, except
271 that commission of such crime by an officer, director or employee shall
272 not be considered a violation of this section, provided (A) the
273 employment or appointment of such officer, director or employee has
274 been terminated, and (B) no clients of the exchange facilitator were
275 harmed or full restitution has been made to all harmed clients;

276 (6) Materially fail to fulfill the exchange facilitator's contractual
277 duties to the client to deliver property or funds to the client unless
278 such failure is due to circumstances beyond the control of the exchange
279 facilitator; and

280 (7) Materially violate any provision of sections 6 to 10, inclusive, of
281 this act or the regulations adopted by the Banking Commissioner in
282 accordance with section 9 of this act.

283 Sec. 12. (NEW) (*Effective October 1, 2013*) (a) A person who violates
284 any provision of sections 6 to 11, inclusive, of this act is subject to civil
285 suit in a court of competent jurisdiction.

286 (b) Any person who commences a civil action pursuant to
287 subsection (a) of this section shall notify the Department of Banking
288 upon filing such action.

289 Sec. 13. Section 36a-330 of the general statutes is repealed and the
290 following is substituted in lieu thereof (*Effective from passage*):

291 As used in sections 36a-330 to 36a-338, inclusive, as amended by this
292 act, unless the context otherwise requires:

293 (1) "Business day" means any day other than a Saturday, Sunday or
294 day on which a financial institution is closed as required or authorized
295 by state or federal law;

296 (2) "Close of business" means the time at which a financial
297 institution closes for regular business operations on any business day;

298 (3) "Eligible collateral" means [(A) United States treasury bills, notes

299 and bonds, (B) United States government agency securities, (C) United
300 States agency variable-rate securities, (D) mortgage pass-through or
301 participation certificates or similar securities, (E) performing one-to-
302 four-family residential mortgage loans that meet the following criteria:
303 (i) The mortgage loan has a loan-to-value ratio which is less than or
304 equal to eighty per cent for loans without private mortgage insurance,
305 or a loan-to-value ratio which is less than or equal to ninety-five per
306 cent for loans with private mortgage insurance; and (ii) the mortgage
307 loan has a payment history of not more than one payment over thirty
308 days in arrears during the past twelve consecutive months or, if the
309 loan has a payment history of less than twelve months in duration, the
310 loan meets the documentation requirements of the Federal National
311 Mortgage Association or the Federal Home Loan Mortgage
312 Corporation; provided, in the case of a subsequent default under any
313 such mortgage loan that continues uncured for more than sixty days,
314 such loan shall no longer qualify as eligible collateral and shall be
315 replaced by a performing mortgage loan that meets the criteria set
316 forth in this subdivision, and (F) state and municipal bonds] the
317 following investments for which prices or values are quoted or readily
318 available: (A) General obligations that are guaranteed fully as to
319 principal and interest by the United States or this state or for which the
320 full faith and credit of the United States or this state is pledged for the
321 payment of principal and interest; (B) general obligations of any
322 agency of the United States, including government sponsored
323 enterprises, which are not guaranteed fully as to principal and interest
324 by the United States or for which the full faith and credit of the United
325 States is not pledged for the payment of principal and interest; (C)
326 mortgage pass-through or participation certificates or similar securities
327 that have been issued or guaranteed by the Federal National Mortgage
328 Association, Federal Home Loan Mortgage Corporation or
329 Government National Mortgage Association; (D) general obligations of
330 municipalities and states other than this state that are rated in the three
331 highest rating categories by a rating agency recognized by the
332 commissioner; and (E) revenue obligations for essential services,
333 including education, transportation, emergency, water and sewer

334 services of municipalities and states that are rated in the three highest
335 rating categories by a rating agency recognized by the commissioner
336 and that are determined to be a prudent investment by the governing
337 board of the qualified public depository, by a management committee
338 or board committee appointed by such governing board or by an
339 officer appointed by such governing board, management committee or
340 board committee;

341 (4) "Financial institution" means a bank, Connecticut credit union,
342 federal credit union or an out-of-state bank that maintains in this state
343 a branch as defined in section 36a-410;

344 (5) "Loss" means issuance of an order of supervisory authority
345 restraining a qualified public depository from making payments of
346 deposit liabilities or the appointment of a receiver for a qualified
347 public depository;

348 (6) "Net worth ratio" has the same meaning as "net worth ratio" as
349 provided in 12 CFR 702.2, as from time to time amended;

350 [(6)] (7) "Public deposit" means (A) moneys of this state or of any
351 governmental subdivision of this state or any commission, committee,
352 board or officer thereof, any housing authority or any court of this
353 state and (B) moneys held by the Judicial Department in a fiduciary
354 capacity;

355 [(7)] (8) "Qualified public depository" or "depository" means a bank,
356 Connecticut credit union, federal credit union or an out-of-state bank
357 that maintains in this state a branch, as defined in section 36a-410,
358 which receives or holds public deposits and, to the extent applicable,
359 (A) segregates eligible collateral for public deposits as described in
360 section 36a-333, as amended by this act, or (B) arranges for a letter of
361 credit to be issued in accordance with section 36a-337;

362 (9) "Risk-based capital ratio" has the same meaning as "total risk-
363 based capital ratio" as provided in Section 325.2 of Subpart 325 of the
364 Federal Deposit Insurance Corporation Rules and Regulations, as

365 amended from time to time;

366 (10) "Tier one leverage ratio" has the same meaning as "leverage
367 ratio" as provided in Section 325.2 of Subpart 325 of the Federal
368 Deposit Insurance Corporation Rules and Regulations, as amended
369 from time to time; and

370 [(8)] (11) "Uninsured public deposit" means the portion of a public
371 deposit that is not insured or guaranteed by the Federal Deposit
372 Insurance Corporation or by the National Credit Union
373 Administration. For purposes of this subdivision, amounts of a public
374 deposit that are insured by the Federal Deposit Insurance Corporation
375 or the National Credit Union Administration include amounts that
376 have been redeposited, with the authorization of the public depositor,
377 into deposit accounts in one or more federally insured banks, out-of-
378 state banks, Connecticut credit unions or federal credit unions,
379 including the qualified public depository, provided the full amounts so
380 included are eligible for insurance coverage by the Federal Deposit
381 Insurance Corporation or by the National Credit Union
382 Administration.

383 Sec. 14. Section 36a-333 of the general statutes is repealed and the
384 following is substituted in lieu thereof (*Effective from passage*):

385 [(a)] (a) To secure public deposits, each qualified public depository shall
386 at all times maintain, segregated from its other assets as provided in
387 subsection (b) of this section, eligible collateral in an amount at least
388 equal to the following percentage of uninsured public deposits held by
389 the depository: (1) For any qualified public depository having a risk-
390 based capital ratio of ten per cent or greater, a sum equal to ten per
391 cent of all uninsured public deposits held by the depository; (2) for any
392 qualified public depository having a risk-based capital ratio of less
393 than ten per cent but greater than or equal to eight per cent, a sum
394 equal to twenty-five per cent of all uninsured public deposits held by
395 the depository; (3) for any qualified public depository having a risk-
396 based capital ratio of less than eight per cent but greater than or equal

397 to three per cent, a sum equal to one hundred per cent of all uninsured
398 public deposits held by the depository; (4) for any qualified public
399 depository having a risk-based capital ratio of less than three per cent,
400 and, notwithstanding the provisions of subdivisions (1) to (3),
401 inclusive, of this subsection, for any qualified public depository which
402 has been conducting business in this state for a period of less than two
403 years except for a qualified public depository that is a successor
404 institution to a qualified public depository which conducted business
405 in this state for two years or more, a sum equal to one hundred twenty
406 per cent of all uninsured public deposits held by the depository;
407 provided, the qualified public depository and the public depositor
408 may agree on an amount of eligible collateral to be maintained by the
409 depository that is greater than the minimum amounts required under
410 subdivisions (1) to (4), inclusive, of this subsection; (5) notwithstanding
411 the risk-based capital ratio provisions of subdivisions (1) to (3),
412 inclusive, of this subsection, for any qualified public depository that is
413 an uninsured bank, a sum equal to one hundred twenty per cent of all
414 public deposits held by the depository; and (6) notwithstanding the
415 risk-based capital ratio provisions of subdivisions (1) to (3), inclusive,
416 of this subsection, for any qualified public depository that is subject to
417 an order to cease and desist, consent order or a preliminary warning
418 letter, or has entered into a stipulation and agreement, memorandum
419 of understanding or a letter of understanding and agreement with a
420 bank or credit union supervisor, a sum equal to one hundred twenty
421 per cent of all uninsured public deposits held by the depository, or, in
422 the case of such a qualified public depository that satisfies the
423 requirements of subsection (f) of this section, a sum equal to one
424 hundred per cent of all uninsured public deposits held by the
425 depository.]

426 (a) (1) To secure public deposits, each qualified public depository
427 that is not under a formal regulatory order shall at all times maintain,
428 segregated from its other assets as provided in subsection (b) of this
429 section, eligible collateral in an amount not less than twenty-five per
430 cent of all uninsured public deposits held by the depository, provided

431 if such depository: (A) Is a bank or out-of-state bank having a tier one
432 leverage ratio of not less than six per cent and a risk-based capital ratio
433 of not less than twelve per cent, or is a credit union or federal credit
434 union having a net worth ratio of not less than eight per cent, the
435 amount of eligible collateral shall be a sum not less than ten per cent of
436 all uninsured deposits held by the depository; or (B) is a bank or out-
437 of-state bank having a tier one leverage ratio of less than five per cent
438 or a risk-based capital ratio of less than ten per cent, or is a credit
439 union or federal credit union having a net worth ratio of less than
440 seven per cent, the amount of eligible collateral shall be not less than a
441 sum equal to one hundred ten per cent of all uninsured public deposits
442 held by the depository.

443 (2) Notwithstanding the provisions of subdivisions (1) and (3) of
444 this subsection, to secure public deposits, each qualified public
445 depository that (A) has been conducting business in this state for a
446 period of less than two years, except for a depository that is a successor
447 institution to a depository which conducted business in this state for
448 two years or more, or (B) is an uninsured bank, shall at all times
449 maintain, segregated from its other assets as required under subsection
450 (b) of this section, eligible collateral in an amount not less than one
451 hundred twenty per cent of all uninsured public deposits held by the
452 depository.

453 (3) To secure public deposits, each qualified public depository that
454 is under a formal regulatory order shall at all times maintain,
455 segregated from its other assets as required under subsection (b) of this
456 section, eligible collateral in an amount not less than one hundred ten
457 per cent of all uninsured public deposits held by the depository.
458 However, if such regulatory order is not related to capital, asset
459 quality, earnings or liquidity, the depository notifies each of its public
460 depositors of the issuance of such order and such depository is a bank
461 or out-of-state bank having a tier one leverage ratio of not less than
462 five per cent and risk-based capital ratio of not less than ten per cent or
463 a credit union or federal credit union having a net worth ratio of not
464 less than seven per cent, such depository may reduce the amount of

465 eligible collateral it is required to maintain under this subdivision to an
466 amount not less than seventy-five per cent of all uninsured public
467 deposits held by the depository, provided if such depository is a bank
468 or out-of-state bank having a tier one leverage ratio of not less than
469 seven and one-half per cent and a risk-based capital ratio of not less
470 than fourteen per cent or a credit union or federal credit union having
471 a net worth ratio of not less than nine and one-half per cent, the
472 amount of eligible collateral may be reduced to a sum not less than
473 fifty per cent of all uninsured public deposits held by the depository.

474 (4) Notwithstanding the provisions of this subsection, the qualified
475 public depository and the public depositor may agree on an amount of
476 eligible collateral to be maintained by the depository that is greater
477 than the minimum amounts required under [subdivisions (1) to (6),
478 inclusive,] subdivision (1) or (3) of this subsection, as applicable. For
479 purposes of this subsection, the amount of all uninsured public
480 deposits held by the depository shall be determined at the close of
481 business on the day of receipt of any public deposit and any deficiency
482 in the amount of eligible collateral required under this section shall be
483 cured not later than the close of business on the following business
484 day. For purposes of this subsection, the depository's tier one leverage
485 ratio and risk-based capital ratio or net worth ratio shall be
486 determined, in accordance with applicable federal regulations and
487 regulations adopted by the commissioner in accordance with chapter
488 54, based on the most recent quarterly call report, provided [(A)] if,
489 during any calendar quarter after the issuance of such report, the
490 depository experiences a decline in its tier one leverage ratio, risk-
491 based capital ratio or net worth ratio to a level that would require the
492 depository to maintain a higher amount of eligible collateral under
493 [subdivisions (1) to (4), inclusive, or subdivision (6)] subdivision (1) or
494 (3) of this subsection, the depository shall increase the amount of
495 eligible collateral maintained by it to the minimum required under
496 [subdivisions (1) to (4), inclusive, or subdivision (6)] subdivision (1) or
497 (3) of this subsection, as applicable, based on such lower tier one
498 leverage ratio, risk-based capital ratio or net worth ratio and shall

499 notify the commissioner of its actions. [; and (B) if, during any calendar
500 quarter after the issuance of such report, the commissioner reasonably
501 determines that the depository's risk-based capital ratio is likely to
502 decline to a level that would require the depository to maintain a
503 higher amount of eligible collateral under subdivisions (1) to (4),
504 inclusive, or subdivision (6) of this subsection, the commissioner may
505 require that the depository increase the amount of eligible collateral
506 maintained by it to the minimum required under subdivisions (1) to
507 (4), inclusive, or subdivision (6) of this subsection, as applicable, based
508 on the commissioner's determination of such lower risk-based capital
509 ratio. For purposes of determining the minimum market value of the
510 eligible collateral under subsection (e) of this section, a qualified public
511 depository shall apply the collateral ratio using uninsured public
512 deposits.] The commissioner may, at any time, require the depository
513 to increase its eligible collateral to an amount greater than that
514 required by subdivision (1) or (3) of this subsection, as applicable, up
515 to a maximum amount of one hundred twenty per cent, if the
516 commissioner reasonably determines that such increase is necessary
517 for the protection of public deposits. If the commissioner determines
518 that such increase in eligible collateral is no longer necessary for the
519 protection of public deposits, the commissioner may allow the
520 depository to adjust the amount downward, as the circumstances
521 warrant, to an amount not less than the minimum amount required by
522 subdivision (1) or (3) of this subsection, as applicable.

523 (5) For purposes of this subsection, "formal regulatory order" means
524 a written agreement related to enforcement, including a letter of
525 understanding or agreement or a written order, that a supervisory
526 agency is required to publish or publishes on its web site, but does not
527 include any written agreement or written order under which the sole
528 obligation of the depository is to pay a civil money penalty, fine or
529 restitution.

530 (b) Each qualified public depository that is a bank or out-of-state
531 bank having a tier one leverage ratio of five per cent or greater or a
532 risk-based capital ratio of [eight] ten per cent or greater shall transfer

533 eligible collateral maintained under subsection (a) of this section to its
534 own trust department, provided such trust department is located in
535 this state unless the commissioner approves otherwise, to the trust
536 department of another financial institution, provided such eligible
537 collateral shall be maintained in such other financial institution's trust
538 department located in this state unless the commissioner approves
539 otherwise, or to a federal reserve bank or federal home loan bank. Each
540 qualified public depository that is a bank or out-of-state bank having a
541 tier one leverage ratio of less than five per cent or a risk-based capital
542 ratio of less than [eight] ten per cent and each qualified public
543 depository that is a credit union or federal credit union shall transfer
544 eligible collateral maintained under subsection (a) of this section to the
545 trust department of a financial institution that is not owned or
546 controlled by the depository or by a holding company owning or
547 controlling the depository, provided such eligible collateral shall be
548 maintained in such other financial institution's trust department
549 located in this state unless the commissioner approves otherwise, or to
550 a federal reserve bank or federal home loan bank. Such transfers of
551 eligible collateral shall be made in a manner prescribed by the
552 commissioner. [Eligible collateral shall be valued at market value or as
553 determined by the commissioner if market value is not readily
554 determinable, and the] The qualified public depository shall determine
555 and adjust the market value of such eligible collateral [shall be
556 determined and adjusted on a quarterly] on a monthly basis. Without
557 the requirement of any further action, the commissioner shall have, for
558 the benefit of public depositors, a perfected security interest in all such
559 eligible collateral held in such segregated trust accounts, granted
560 pursuant to and in accordance with the terms of the agreement
561 between the public depositor and the qualified public depository. Such
562 security interest shall have priority over all other perfected security
563 interests and liens. The commissioner may, at any time, require the
564 depository to value the collateral more frequently than monthly if the
565 commissioner reasonably determines that such valuation is necessary
566 for the protection of public deposits. Each holder of eligible collateral
567 shall file with the commissioner, at the end of each calendar quarter, a

568 report with the CUSIP number, description and par value of each
 569 investment it holds as eligible collateral.

570 (c) The depository shall have the right to make substitutions of
 571 eligible collateral at any time without notice. The depository shall have
 572 the right to reduce the amount of eligible collateral maintained by it
 573 that is in excess of the amount required under subsection (a) of this
 574 section. [provided such reduction shall be determined based on the
 575 amount of all uninsured public deposits held by the depository and
 576 the depository's risk-based capital ratio as determined in accordance
 577 with said subsection (a). The depository shall provide written notice to
 578 its public depositors of any such reduction in the amount of eligible
 579 collateral maintained under subsection (a) of this section.]

580 [(d)] The income from the assets which constitute segregated
 581 eligible collateral shall belong to the depository without restriction.

582 [(e) Eligible collateral pledged to secure public deposits under
 583 subsection (a) of this section shall have a minimum market value as
 584 expressed in the following collateral ratios:

T1		Collateral Ratio
T2	Form of Eligible	(Market value
T3	Collateral Pledged	divided by public
T4		deposit plus
T5		accrued interest)
T6	1. United States Treasury bills, notes and bonds	
T7	A. Maturing in less than one year	102%
T8	B. Maturing in one to five years	105%
T9	C. Maturing in more than five years	110%
T10	D. Zero-coupon treasury securities with	
T11	maturities exceeding ten years	120%
T12	2. Actively traded United States government	
T13	agency securities	

T14	A. Maturing in less than one year	103%
T15	B. Maturing in one to five years	107%
T16	C. Maturing in more than five years	115%
T17	3. United States government agency	
T18	variable rate securities	103%
T19	4. Government National Mortgage Association	
T20	mortgage pass-through or participation	
T21	certificates or similar securities	
T22	A. Current issues	115%
T23	B. Older issues	120%
T24	C. Issues for which prices are not quoted	125%
T25	5. Other United States government securities	125%
T26	6. Other mortgage pass-through or participation	
T27	certificates or similar securities	125%
T28	7. One-to-four family residential mortgages	125%
T29	8. State and municipal bonds	
T30	A. General obligation bonds	
T31	i. Maturing in less than one year	102%
T32	ii. Maturing in one to five years	107%
T33	iii. Maturing in more than five years	110%
T34	B. Revenue bonds	
T35	i. Maturing in less than one year	105-110%
T36	ii. Maturing in one to five years	110-120%
T37	iii. Maturing in more than five years	120-130%

585 (f) A qualified public depository that is subject to an order to cease
586 and desist, consent order or a preliminary warning letter, or has
587 entered into a stipulation and agreement, memorandum of
588 understanding or a letter of understanding and agreement with a bank
589 or credit union supervisor, may maintain eligible collateral in a sum
590 equal to or greater than one hundred per cent of all uninsured public
591 deposits held by the depository, provided (1) the depository has a risk-

592 based capital ratio of twelve per cent or greater, and (2) the depository
593 satisfies the following conditions, to the extent applicable: (A) The
594 depository may not pledge eligible collateral in the form described in
595 subsection (e)6. of this section, except for mortgage pass-through or
596 participation certificates or similar securities that have been issued or
597 guaranteed by the Federal National Mortgage Association or the
598 Federal Home Loan Mortgage Corporation and for which prices are
599 quoted; (B) the depository may not pledge eligible collateral in the
600 form described in subsection (e)4.C. of this section; (C) if the public
601 depository pledges eligible collateral in the form described in
602 subsection (e)7. of this section, the collateral ratio for such mortgages
603 shall be one hundred fifty per cent; and (D) if the public depository
604 pledges eligible collateral in the form described in subsection (e)8. of
605 this section, such collateral shall be rated in the three highest rating
606 categories by a rating service recognized by the commissioner. The
607 depository may pledge any other eligible collateral that is not limited
608 by subdivision (2) of this subsection.]

609 Sec. 15. Section 36a-338 of the general statutes is repealed and the
610 following is substituted in lieu thereof (*Effective from passage*):

611 On each call report date, each qualified public depository shall file
612 with the commissioner a written report, certified under oath,
613 indicating (1) the qualified public depository's tier one leverage ratio
614 and risk-based capital ratio [and total capital] or net worth ratio, as
615 determined in accordance with applicable federal regulations and
616 regulations adopted by the commissioner in accordance with chapter
617 54, (2) the uninsured and total amount of public deposits held by the
618 qualified public depository other than deposits that have been
619 redeposited into the qualified public depository by another insured
620 depository institution pursuant to a reciprocal deposit arrangement
621 that makes such funds eligible for insurance coverage by the Federal
622 Deposit Insurance Corporation or the National Credit Union
623 Administration, (3) the [amount and nature] description and market
624 value of any eligible collateral segregated and designated to secure the
625 uninsured public deposits in accordance with sections 36a-330 to 36a-

626 338, inclusive, as amended by this act, and (4) the amount and the
627 name of the issuer of any letter of credit issued pursuant to section 36a-
628 337. Each depository shall furnish a copy of its most recent report to
629 any public depositor having public funds on deposit in the depository,
630 upon request of the depositor. Any public depository which refuses or
631 neglects to furnish any report or give any information as required by
632 this section shall no longer be a qualified public depository and shall
633 be excluded from the right to receive public deposits.

634 Sec. 16. Section 12-195h of the general statutes is repealed and the
635 following is substituted in lieu thereof (*Effective October 1, 2013*):

636 Any municipality, by resolution of its legislative body, as defined in
637 section 1-1, may assign, for consideration, any and all liens filed by the
638 tax collector to secure unpaid taxes on real property as provided under
639 the provisions of this chapter. The consideration received by the
640 municipality shall be negotiated between the municipality and the
641 assignee. The assignee or assignees of such liens shall have and possess
642 the same powers and rights at law or in equity as such municipality
643 and municipality's tax collector would have had if the lien had not
644 been assigned with regard to the precedence and priority of such lien,
645 the accrual of interest and the fees and expenses of collection. The
646 assignee shall have the same rights to enforce such liens as any private
647 party holding a lien on real property. The assignee, or any subsequent
648 assignee, shall provide written notice of an assignment, not later than
649 thirty days after the date of such assignment, to any holder of a
650 mortgage, on the real property that is the subject of the assignment,
651 provided such holder is of record as of the date of such assignment.
652 Such notice shall include information sufficient to identify (1) the
653 property that is subject to the lien and in which the holder has an
654 interest, (2) the name and addresses of the assignee, and (3) the
655 amount of unpaid taxes, interest and fees being assigned relative to the
656 subject property as of the date of the assignment.

657 Sec. 17. Section 36a-275 of the general statutes is repealed and the
658 following is substituted in lieu thereof (*Effective October 1, 2013*):

659 (a) As used in this section, the term "debt securities" means (1) any
660 marketable obligation evidencing indebtedness of any person in the
661 form of direct, assumed or guaranteed bonds, notes or debentures or
662 any security that has attributes similar to such marketable obligations;
663 (2) any obligation identified by certificates of participation in
664 investments described in subdivision (1) of this subsection in which a
665 Connecticut bank could invest directly; or (3) repurchase agreements,
666 and the term "debt mutual fund" means a partnership interest in,
667 shares of stock of, units of beneficial interest in or other ownership
668 interest in any one investment company registered under the
669 Investment Company Act of 1940, as from time to time amended,
670 commonly described as mutual funds, money market funds,
671 investment trusts or business trusts, provided the portfolios of such
672 investment companies consist solely of investments described in
673 subdivision (1) of this subsection.

674 (b) In addition to other investments authorized by this part, any
675 Connecticut bank may purchase or hold for its own account debt
676 securities and debt mutual funds without regard to any other liability
677 to the Connecticut bank of the maker, obligor, guarantor or issuer of
678 such debt securities and debt mutual funds, provided: (1) The debt
679 securities and debt mutual funds are rated in the three highest rating
680 categories by a rating service of such securities recognized by the
681 commissioner or, if not so rated, are determined by the bank's
682 governing board to be a prudent investment; (2) unless the bank
683 obtains the prior approval of the commissioner, the total amount of the
684 debt securities and debt mutual funds of any one maker, obligor or
685 issuer purchased or held by a Connecticut bank or for a Connecticut
686 bank's account may not exceed, at any time, twenty-five per cent of its
687 total equity capital and reserves for loan and lease losses; and (3) the
688 total amount of any debt securities and debt mutual funds purchased
689 or held by a Connecticut bank or for a Connecticut bank's account
690 pursuant to this subsection may not exceed at any time twenty-five per
691 cent of its assets.

692 (c) In addition to other investments authorized by this part, any

693 Connecticut bank may purchase or hold for its own account the
694 following debt securities and debt mutual funds without regard to any
695 other liability to the Connecticut bank of the maker, obligor, guarantor
696 or issuer of such debt securities and debt mutual funds, provided (1)
697 the debt securities and debt mutual funds are rated in the three highest
698 rating categories by a rating service recognized by the commissioner,
699 or, if not so rated, determined by the bank's governing board to be a
700 prudent investment; (2) unless the bank obtains the prior approval of
701 the commissioner, the total amount of the debt securities and debt
702 mutual funds of any one maker, obligor or issuer purchased or held by
703 a Connecticut bank or for a Connecticut bank's account may not
704 exceed, at any time, seventy-five per cent of its total equity capital and
705 reserves for loan and lease losses; and (3) the total amount of any debt
706 securities and debt mutual funds purchased or held by a Connecticut
707 bank or for a Connecticut bank's account pursuant to this subsection
708 may not exceed at any time fifty per cent of its assets:

709 (A) General obligations of any agency of the United States,
710 including government sponsored enterprises, which are not
711 guaranteed fully as to principal and interest by the United States or for
712 which the full faith and credit of the United States is not pledged for
713 the payment of principal and interest;

714 (B) Residential mortgage pass-through securities and other
715 residential mortgage-backed securities, including collateralized
716 mortgage obligations and real estate investment conduits that are
717 issued or guaranteed by the Federal National Mortgage Association or
718 the Federal Home Loan Mortgage Corporation, provided said
719 association or corporation is operating at the time of issuance or
720 guarantee under the conservatorship or receivership of the Federal
721 Housing Finance Agency; and

722 (C) Debt mutual funds, provided the portfolios of the investment
723 companies consist solely of investments described in subparagraphs
724 (A) and (B) of this subdivision.

725 [(c)] (d) In addition to other investments authorized by this part,
726 any Connecticut bank may purchase or hold for its own account the
727 following debt securities and debt mutual funds without regard to any
728 other liability to the Connecticut bank of the maker, obligor, guarantor
729 or issuer of such debt securities and debt mutual funds, provided the
730 debt securities and debt mutual funds are rated in the three highest
731 rating categories by a rating service recognized by the commissioner
732 or, if not so rated, determined by the bank's governing board to be a
733 prudent investment:

734 (1) The general obligations of the United States or this state;

735 (2) Securities which are guaranteed fully as to principal and interest
736 by the United States or this state or for which the full faith and credit
737 of the United States or this state is pledged for the payment of
738 principal and interest;

739 (3) Securities, including repurchase agreements, the principal and
740 interest of which are irrevocably secured by securities described in
741 subdivisions (1) and (2) of this subsection; and

742 [(4) General obligations of any agency of the United States,
743 including government sponsored enterprises, which are not
744 guaranteed fully as to principal and interest by the United States or for
745 which the full faith and credit of the United States is not pledged for
746 the payment of principal and interest; and]

747 [(5)] (4) Debt mutual funds, provided the portfolios of the
748 investment companies consist solely of investments described in
749 subdivisions (1) to [(4)] (3), inclusive, of this subsection.

750 Sec. 18. Subsection (c) of section 20-529b of the general statutes is
751 repealed and the following is substituted in lieu thereof (*Effective*
752 *October 1, 2013*):

753 (c) Except in cases of breach of contract or substandard performance
754 of services or where the parties have mutually agreed upon an

755 alternate payment schedule in writing, each appraisal management
 756 company operating in this state shall make payment to an appraiser
 757 for the completion of an appraisal or valuation assignment not later
 758 than [sixty] forty-five days after the date on which such appraiser
 759 transmits or otherwise provides the completed appraisal or valuation
 760 study to the appraisal management company or its assignee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	36a-21(c)
Sec. 2	<i>from passage</i>	36a-127
Sec. 3	<i>from passage</i>	36a-145(o)
Sec. 4	<i>from passage</i>	36a-262(a)
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section
Sec. 9	<i>October 1, 2013</i>	New section
Sec. 10	<i>October 1, 2013</i>	New section
Sec. 11	<i>October 1, 2013</i>	New section
Sec. 12	<i>October 1, 2013</i>	New section
Sec. 13	<i>from passage</i>	36a-330
Sec. 14	<i>from passage</i>	36a-333
Sec. 15	<i>from passage</i>	36a-338
Sec. 16	<i>October 1, 2013</i>	12-195h
Sec. 17	<i>October 1, 2013</i>	36a-275
Sec. 18	<i>October 1, 2013</i>	20-529b(c)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Banking Dept.	GF - Cost	160,300	156,800

Municipal Impact: None

Explanation

The bill results in a cost to the Department of Banking (DOB) of \$160,300 in FY 14 and \$156,800 in FY 15. The costs include \$90,000 for one and one-half Bank Examiners, \$60,300 in fringe benefits, \$6,500 in other expenses in each fiscal year and \$3,500 in one-time computer related equipment in FY 14. The DOB requires the personnel to monitor the actions of exchange facilitators and ensure the standards for facilitated transactions are met. sHB 6350, the FY 14 and FY 15 budget, as favorably reported by the Appropriations Committee, includes \$160,300 in FY 14 and \$156,800 in FY 15 to support the personnel to monitor exchange facilitators.

The bill makes other various procedural and technical changes that are not anticipated to result in a fiscal impact.

House "A" (LCO 7548) results in the cost as stated above.

House "B" (LCO 7600) results in no fiscal impact as it concerns transactions between private individuals.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6339 (as amended by House “A” and “B”)******AN ACT CONCERNING BANKS AND THE ECONOMIC DEVELOPMENT OF LOAN PRODUCTION OFFICES.*****SUMMARY:**

This bill makes a variety of changes in the banking laws as described in the section-by-section analysis below.

Among other things, the bill (1) prohibits the disclosure of non-public information contained in certain Banking Department examination reports and (2) allows Connecticut banks, with the banking commissioner’s approval, to establish loan production offices out of state.

The bill makes changes in the exchange facilitator laws. It requires exchange facilitators to (1) provide certain notifications to their clients; (2) maintain a set minimum fidelity bond or other accounts with certain stipulations; (3) maintain a specific amount of insurance coverage, deposit a specified amount of cash or securities, or provide a specified minimum amount in irrevocable letters of credit; and (4) follow certain rules for handling and investing funds. It allows the banking commissioner to adopt implementing regulations.

The bill makes changes in the public deposits laws. It:

1. restricts the types of investments that can be considered eligible collateral,
2. changes the collateralization requirements for qualified public depositories (QPD),
3. sets new thresholds that determine the trust accounts to which the funds must be transferred depending on whether the QPD is

a bank or a credit union,

4. requires a QPD to determine and adjust the market value of eligible collateral on a monthly basis, and
5. changes the QPD's reporting requirements and establishes new filing requirements for holders of eligible collateral.

The bill requires the party to whom a municipality has assigned a tax lien, or any subsequent assignee, to provide written notice to the mortgage holder within 30 days after the assignment.

The bill decreases, from 60 to 45 days, the time in which an appraisal management company must pay an appraiser for an appraisal or valuation assignment. By law, the (1) time period starts when the appraiser transmits or otherwise provides the completed appraisal or valuation study to the company or its assignee and (2) deadline does not apply in cases of breach of contract or substandard performance of services or where the parties have mutually agreed upon an alternate payment schedule in writing.

The bill establishes the amount of certain debt securities that Connecticut banks may purchase or hold for their accounts.

Lastly, the bill makes technical and conforming changes.

*House Amendment "A" adds provisions related to (1) exchange facilitators for tax deferred exchanges, (2) QPDs, (3) assignment of tax liens on real property, and (4) investments by Connecticut banks.

*House Amendment "B" decreases, from 60 to 45 days, the time an appraisal management company operating in Connecticut has to pay an appraiser for an appraisal or valuation assignment.

EFFECTIVE DATE: October 1, 2013, except the provisions on Connecticut bank mergers, loan production offices, and QPDs are effective upon passage.

§§ 1-4 — BANKS AND THE ECONOMIC DEVELOPMENT OF LOAN PRODUCTION OFFICES

The bill prohibits directors, officers, employees, or agents of licensed business and industrial development corporations and entities licensed to act as trustees from disclosing non-public information contained in a licensee's Banking Department examination report without the banking commissioner's prior written consent. Under existing law, this restriction applies to Connecticut banks and Connecticut credit unions. By law a "business and industrial development corporation" is a person approved or seeking approval from the federal Small Business Administration as a participating lender under its loan guarantee programs.

The bill allows Connecticut banks, with the banking commissioner's approval, to establish loan production offices out of state, instead of just in state. A "loan production office" is an office whose activities are limited to loan production and solicitation.

Mergers with Affiliates

By law, a Connecticut bank can merge with one of its affiliates that is not a bank if the resulting institution is a Connecticut bank. The merger must be done in accordance with the law on merging Connecticut banks. The bill specifies that the affiliate is to be treated as a constituent bank for purposes of these merger proceedings. The bill maintains the exception that for issues related to corporate procedure and mergers, an affiliate should comply with the laws of the state under which it was organized.

§§ 5-12 — EXCHANGE FACILITATORS FOR TAX DEFERRED EXCHANGES.

Under federal law, a taxpayer can transfer certain property held for productive use in a trade or business or for investment (the "relinquished property") and subsequently receive "replacement property" of a like kind. If the taxpayer uses the replacement property for the same purpose as the relinquished property, the Internal Revenue Service (IRS) does not recognize a loss or a taxable gain from

the transaction. The bill imposes requirements on people or businesses who act as exchange facilitators in these transactions.

§ 5 — Exchange Facilitators

The bill defines an “exchange facilitator” as a person or entity who:

1. maintains a Connecticut office to solicit business facilitating the exchange of like-kind property or
2. for a fee (a) facilitates an exchange of like-kind property by entering into an agreement with a client in which the facilitator acquires contractual rights to sell the client's relinquished Connecticut property and transfer a replacement property to the client, acting as an intermediary that qualifies under federal law, (b) enters into an agreement with a client to take title to a Connecticut property acting as an exchange accommodation titleholder that qualifies under federal law, or (c) enters into an agreement with a client to act as a qualified trustee or qualified escrow holder (see BACKGROUND).

An exchange facilitator does not include:

1. a financial institution acting solely as a (a) depository for exchange funds, (b) qualified escrow holder, or (c) qualified trustee, and not otherwise facilitating exchanges;
2. a person or entity (a) teaching seminars or classes or giving presentations to attorneys, accountants, or other professionals about tax-deferred exchanges or how to act as exchange facilitators or (b) advertising the seminars, classes, or presentations; or
3. an entity that an exchange facilitator or person representing one wholly owns and uses to facilitate exchanges or take title to Connecticut property as an exchange accommodation titleholder.

Under the bill, a “financial institution” is any state or federally chartered bank, credit union, savings and loan holding company, savings and loan association, savings bank, trust company, or trust bank whose accounts are insured by the full faith and credit of the United States, Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund, or other similar program.

§ 6 — Notice of Change in Control

The bill generally requires an exchange facilitator to notify each existing client whose relinquished property is located in Connecticut or whose replacement property held under a qualified exchange accommodation agreement (see BACKGROUND) is in Connecticut of any change in control of the facilitator. This applies to any transfer or transfers within a 12-month period of more than 50% of the exchange facilitator's assets or ownership interests, directly or indirectly.

The clients must be notified within 10 business days of the change in control by fax, email, or first class mail.

The facilitator must also post a notice of change of control on his or her web site for at least 90 days after the change. The notice must state the name, address, and other contact information of the person who received control.

The notification requirement does not apply to publicly traded companies that remain publicly traded after a change in control.

§§ 7-10 — Financial Requirements and Handling Funds

The bill requires an exchange facilitator to, at all times:

1. maintain a minimum \$1 million fidelity bond executed by an insurer authorized to do business in Connecticut;
2. deposit all exchange funds (funds the exchange facilitator receives from, or on behalf of, the client to facilitate an exchange of like-kind property) in a separately identified account and (b) provide that any withdrawals from that account require both

the facilitator's and client's written authorizations by commercially reasonable means, including the client's delivery of authorization to the facilitator and the facilitator's delivery to the depository institution of its sole authorization, or delivery to the depository institution of both the client's and the facilitator's authorization; or

3. deposit all exchange funds in a qualified escrow account or qualified trust with a financial institution and require both the facilitator's and the taxpayer's written authorizations for any withdrawals (see BACKGROUND).

The bill also requires an exchange facilitator to, at all times, (1) maintain a minimum \$250,000 errors and omissions insurance policy executed by a Connecticut authorized insurer or (2) deposit at least \$250,000 cash or securities or provide at least \$250,000 in irrevocable letters of credit.

Additionally, an exchange facilitator must:

1. hold all of the client's exchange funds, other than the facilitator's compensation, in a way that provides liquidity and preserves principal;
2. notify the client how the exchange funds will be invested or deposited; and
3. deposit or invest exchange funds in investments that satisfy liquidity and preservation of principal investment goals and meet the prudent investor standard.

Under Connecticut law, trustees must follow certain standards when investing and managing trust assets when the trust provisions are not explicit. Among the things, trustees must invest and manage assets as "prudent investors" would and use any special skills or expertise they have. This requirement is referred to as the "prudent investor standard."

Under the bill, the facilitator violates the prudent investor standard if he or she:

1. knowingly commingles exchange funds with the exchange facilitator's operating accounts or
2. loans or transfers exchange funds to any person or entity affiliated with or related to the exchange facilitator. But, the funds may be transferred pursuant to the exchange contract (a) to pay an exchange expense or complete the acquisition of the replacement property, (b) to deposit exchange funds with a financial institution, or (c) to an exchange accommodation titleholder, a trustee of a qualified trust, or a qualified escrow agent.

The bill allows exchange funds to be pooled. To “pool” is to (1) aggregate multiple clients’ exchange funds for investment purposes to achieve common investment goals and efficiencies and (2) ensure that the exchange funds are readily identifiable to each client for whom they are held, through an accounting or subaccounting system.

Under the bill, exchange funds are not subject to execution or attachment on any claim against the exchange facilitator.

§§ 10-12 — Prohibited Conduct

The bill prohibits an exchange facilitator from knowingly keeping, or causing to be kept, any money in any financial institution under a client’s name unless the money actually belongs to the client and the client entrusted it to the facilitator.

It also prohibits exchange facilitators or a facilitator’s owners, officers, directors, and employees, from knowingly:

1. making any intentionally misleading material representations about any exchange facilitator transaction;
2. pursuing a continued or flagrant course of misrepresentation or

- making false statements through advertising or by other means;
3. failing, within a reasonable time, to account for any money or property belonging to another person that the exchange facilitator may possess or control;
 4. engaging in fraudulent or dishonest dealings;
 5. committing any crime related to the exchange facilitation business involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or theft, except there is no violation if the crime was committed by an officer, director, or employee and (1) that individual's employment or appointment has been terminated and (2) no clients were harmed or those that were harmed received full restitution;
 6. materially failing to fulfill the facilitator's contractual duties to the client to deliver property or funds to the client, unless the failure is due to circumstances beyond the facilitator's control; and
 7. materially violating any of the bill's provisions regarding exchange facilitators or the regulations adopted pursuant to them.

The bill permits any person claiming to suffer damage due to the exchange facilitator's illegal actions to file a claim with the banking commissioner against the exchange facilitator to recover damages from such bonds, funds, or policies, or letters of credit set forth above.

The bill subjects any person who violates it to a possible civil suit and requires the person who commences the suit to notify the Department of Banking upon filing it.

§§ 13-15 — PUBLIC DEPOSITS.

The bill makes various changes to the public deposits laws.

Eligible Collateral

The bill changes the definition of eligible collateral, restricting the investments that are considered eligible collateral. In general:

1. United States treasury bills, notes, and bonds are still allowed as eligible collateral;
2. United States government agency securities and variable-rate securities have been limited to certain kinds;
3. government issued mortgage backed securities are allowed, but privately-issued mortgage backed securities are not allowed;
4. mortgages are no longer allowed; and
5. state and municipal bonds are still allowed but under more restricted parameters.

Specifically, the bill defines “eligible collateral” as the following investments for which prices or values are quoted or readily available:

1. general obligations that the United States or Connecticut guarantees fully as to principal and interest or for which the United States or Connecticut pledges the full faith and credit for the payment of principal and interest;
2. general obligations of any federal agency, including government sponsored enterprises, which are not guaranteed fully as to principal and interest by the United States or for which the full faith and credit of the United States is not pledged for the payment of principal and interest;
3. mortgage pass-through or participation certificates or similar securities that the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association issued or guaranteed;
4. general obligations of municipalities and states other than this

state that are rated in the three highest rating categories by a rating agency recognized by the banking commissioner; and

5. revenue obligations for essential services, including education, transportation, emergency, water, and sewer services of municipalities and states that are rated in the three highest rating categories by a rating agency recognized by the commissioner and that are determined to be a prudent investment by the QPD governing board, a management committee or board committee appointed by the governing board, or by an officer appointed by the governing board, management committee, or board committee.

Collateral Requirements

By law, each QPD must maintain at all times, separate from its other assets, a minimum amount of eligible collateral to secure public deposits (collateralization level). The bill establishes new minimum collateralization levels for a QPD depending on whether it (1) is or is not under a formal regulatory order, (2) has been conducting business in the state for less than two years, or (3) is an uninsured bank.

Under the bill, “formal regulatory order” means a written agreement related to enforcement, including a letter of understanding or agreement or a written order that a supervisory agency is required to publish or publishes on its website. It does not include any written agreement or order under which the QPD’s sole obligation is to pay a civil penalty, fine, or restitution.

QPD Not Under a Formal Regulatory Order. The bill requires a QPD that is not under a formal regulatory order to maintain eligible collateral of at least 25% of all uninsured public deposits held by the QPD, with the following exceptions:

1. if the QPD is a bank or out-of-state bank having a tier one leverage ratio of at least 6% and a risk-based capital ratio of at least 12%, or is a credit union or federal credit union having a

net worth ratio of at least 8%, the amount of eligible collateral must be at least 10% of all uninsured deposits held by the QPD; or

2. if the QPD is a bank or out-of-state bank having a tier one leverage ratio below 5% or a risk-based capital ratio below 10%, or is a credit union or federal credit union having a net worth ratio below 7%, the amount of eligible collateral must be at least 110% of all uninsured public deposits held by the QPD (see BACKGROUND).

QPD under a Formal Regulatory Order. The bill requires a QPD that is under a formal regulatory order to maintain eligible collateral of at least 110% of all uninsured public deposits held by the QPD. This does not apply when (1) the formal regulatory order is not related to capital, asset quality, earnings, or liquidity and (2) the QPD notifies each of its public depositors of the issuance of the order. In that case, the required collateral may be reduced as follows:

1. if the QPD is a bank or out-of-state bank having a tier one leverage ratio of at least 5% and risk-based capital ratio of at least 10% or a credit union or federal credit union having a net worth ratio of at least 7%, the QPD may reduce the required amount of eligible collateral to at least 75% of all uninsured public deposits held by the QPD; or
2. if the QPD is a bank or out-of-state bank having a tier one leverage ratio of at least 7.5% and a risk-based capital ratio of at least 14% or a credit union or federal credit union having a net worth ratio of at least 9.5%, the amount of eligible collateral may be reduced to at least 50% of all uninsured public deposits held by the QPD.

QPD Operating in the State for Less than Two Years or Uninsured Bank. The bill requires each QPD that (1) has been conducting business in Connecticut for less than two years, except for a successor institution to a depository that conducted business here for

two years or more, or (2) is an uninsured bank, to maintain eligible collateral of at least 120% of all uninsured public deposits held by the QPD.

Eligible Collateral Amounts Determined by Agreement. By law, a QPD and a public depositor may agree on a collateralization level that is greater than the applicable statutory minimum amount required. Under current law, when determining the required statutory minimum, the amount of uninsured public deposit must be determined at the close of business on the day of receipt of any public deposit and any deficiency in the required amount of eligible collateral must be cured no later than the close of business on the following business day.

The bill maintains these requirements, but adds that in determining the minimum required amount of eligible collateral, the QPD's tier one leverage ratio and risk-based capital ratio or net worth ratio must be calculated, in accordance with applicable federal and state regulations, based on the most recent quarterly call report (see BACKGROUND). If, in subsequent calendar quarters, the depository experiences a decline in its tier one leverage ratio, risk-based capital ratio, or net worth ratio such that the agreed upon collateral level is lower than the applicable statutory minimum, the bill requires the QPD to increase the amount of eligible collateral maintained to the applicable statutory minimum. By law, the QPD must notify the commissioner of such actions.

Commissioner's Adjustment of Eligible Collateral Requirements. The bill allows the commissioner to increase the required collateralization level, up to a maximum amount of 120%, if he reasonably determines that the increase is necessary for the protection of public deposits. If he determines that the increase is no longer necessary, he may allow the QPD to reduce the amount to not less than the applicable statutory minimum required amount.

Segregation of Eligible Collateral from Other Assets. By law,

each QPD must transfer, in a manner consistent with the commissioner's requirements, the eligible collateral that it maintains to an account separate from its own assets based on the QPD's risk-based capital ratio. The bill increases, from 8% to 10%, the risk-based capital ratio threshold and adds "tier one leverage ratio" as a new measure to determine the accounts to which the funds are to be transferred.

Specifically, if the QPD is a bank or out-of-state bank having a tier one leverage ratio of at least 5% or a risk-based capital ratio of at least 10%, the QPD must transfer eligible collateral to (1) its own trust department within the state, unless approved by the commissioner, (2) another financial institution's trust department within the state, unless approved by the commissioner, or (3) a federal reserve bank or federal home loan bank. If the QPD is a bank or out-of-state bank having a tier one leverage ratio below 5% or a risk-based capital ratio below 10% or a credit union or federal credit union, the QPD must transfer eligible collateral to (1) the trust department of a financial institution, located in the state, unless approved by the commissioner, that is not owned or controlled by the QPD or by a holding company owning or controlling the QPD, or (2) a federal reserve bank or federal home loan bank.

Other Eligible Collateral Requirements. The bill requires a QPD to determine and adjust the market value of eligible collateral on a monthly basis, instead of quarterly. The bill authorizes the commissioner to require the valuation of the collateral more frequently than monthly if necessary to protect public deposits.

By law, the commissioner has a perfected security interest in all eligible collateral held in the segregated trust accounts. Such interest has priority over all other perfected security interests and liens.

The bill requires each holder of eligible collateral to file a report with the commissioner, at the end of each calendar quarter, containing (1) the description and par value of each investment it holds as eligible collateral and (2) the CUSIP number (see BACKGROUND).

Under current law, the QPD has the right to reduce the amount of

eligible collateral maintained if it gives written notice to its public depositors. The bill allows reductions without written notice, but limits reductions to amounts that are in excess of the applicable statutory minimum required amount. By law, a QPD can make substitutions of eligible collateral at any time without notice and keep the income from the assets.

The bill repeals the provisions that pertain to required minimum collateral market values and the requirements that pertain to QPDs that are subject to cease and desist orders.

QPD Reporting Requirements.

By law, each QPD must file a written report with the commissioner. The bill requires the report to include (1) the QPD's tier one leverage ratio and risk-based capital ratio or net worth ratio, (2) uninsured and total amount of public deposits, and (3) the description and market value of any eligible collateral.

All other reporting requirements remain unchanged, including the requirements to (1) file the report on each call report date (2) certify the report under oath, (3) indicate the amount and name of the issuer of any letters of credit, and (4) provide a copy of the report to public depositors upon request. Failure to furnish any report or give any information as required will result in disqualification and loss of the right to receive public deposits.

§ 16 — NOTIFICATION OF SALE OF REAL PROPERTY TAX LIEN

The bill requires the party to whom a municipality has assigned a tax lien, or any subsequent assignee, to provide written notice to the mortgage holder within 30 days after the assignment.

The bill requires the notice to include (1) the name and address of the party to whom the tax lien was assigned; (2) the amount of unpaid taxes, interest, and fees as of the date of the assignment; and (3) information to identify the property.

§ 17 — INVESTMENTS BY CONNECTICUT BANKS

The bill establishes the amount of certain debt securities that Connecticut banks may purchase or hold for their accounts. It applies to:

1. general obligations of a federal agency, including government-sponsored enterprises, that are not guaranteed fully as to principal and interest by the United States or for which the United States does not pledge its full faith and credit for payment of principal and interest;
2. residential mortgage pass-through securities and other residential mortgage-backed securities, including collateralized mortgage obligations and real estate investment conduits issued or guaranteed by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, if at the time of issuance or guarantee they are operating under conservatorship or receivership of the Federal Housing Financing Authority; and
3. debt mutual funds where the portfolios of the investment companies consist only of the type of investments described above.

For these types of investments, the bill allows the bank to purchase or hold them without regard to other liability to the bank of the maker, obligor, guarantor, or issuer if:

1. they are rated in the three highest rating categories by a rating service recognized by the banking commissioner or, if not rated, determined by the bank's governing board to be a prudent investment;
2. the total amount of these investments from any one maker, obligor, or issuer does not exceed 75% of the bank's total equity capital and reserves for loan and lease losses, unless the commissioner provides prior approval; and
3. the total amount of them does not exceed 50% of the bank's

assets.

Currently, a Connecticut bank can purchase or hold the type of general obligations described above but must only meet the first condition regarding ratings.

BACKGROUND

Exchange Accommodation Titleholder and Qualified Exchange Accommodation Arrangement

Federal law allows an exchange accommodation titleholder (EAT), through a qualified exchange accommodation arrangement (QEAA) with a property's taxpayer, to act as the beneficial owner of a property for income tax purposes in order to facilitate a like-kind exchange. In order to do so, the EAT must (1) not be the taxpayer for the property or a disqualified person; (2) be subject to federal income tax; and (3) hold the legal title to the property, or other indicia of ownership such as a contract for deed (IRS Rev. Proc. 2000-37).

Qualified Intermediary

Federal law defines a qualified intermediary as a person involved in a taxpayer's transfer of relinquished property who (1) is not the taxpayer or a disqualified person and (2) enters into a QEAA, acquires the relinquished property from the taxpayer and transfers it, then acquires the replacement property and transfers it to the taxpayer (26 C.F.R. § 1.1031(k)-1(g)(4)).

Qualified Trust

According to federal law, a trustee and a taxpayer create a qualified trust through an agreement that expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or cash equivalent held by the trustee (26 C.F.R. § 1.1031(k)-1(g)(3)).

Qualified Escrow

An escrow holder and a taxpayer create a qualified escrow account through an agreement that expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of the cash or

cash equivalent held in the escrow account (26 C.F.R. § 1.1031(k)-1(g)(3)).

Qualified Public Depository (QPD)

By law, “qualified public depository” or “depository” means a bank, Connecticut credit union, federal credit union, or an out-of-state bank that maintains a branch in the state, which receives or holds public deposits (CGS § 36a-330).

Public Deposit

“Public deposit” means (1) money of the state or its subdivisions, or any commission, committee, board or officer thereof; any housing authority; or any Connecticut court and (2) money held by the Judicial Department in a fiduciary capacity (CGS § 36a-330).

Uninsured Public Deposit

“Uninsured public deposit” means the portion of a public deposit that is not insured or guaranteed by the Federal Deposit Insurance Corporation (FDIC) or by the National Credit Union Administration (NCUA). Amounts of a public deposit that are insured by FDIC or NCUA include amounts that have been redeposited, with the authorization of the public depositor, into deposit accounts in one or more federally insured banks, out-of-state banks, Connecticut credit unions, or federal credit unions, including the qualified public depository, provided the full amounts are eligible for insurance coverage by FDIC or NCUA (CGS § 36a-330).

Tier One Leverage Ratio

Tier one leverage ratio has the same meaning as “leverage ratio” which means the ratio of Tier 1 capital to total assets (12 CFR § 325.2).

Risk-based Capital Ratio

“Total risk-based capital ratio” is the ratio of qualifying total capital to risk-weighted assets, as calculated in accordance with the FDIC's Statement of Policy on Risk-Based Capital (12 CFR § 325.2).

Net Worth Ratio

Net worth ratio is the ratio of the net worth of the credit union to the total assets of the credit union (12 C.F.R. § 702.2(g)).

Net Worth

Net worth means the retained earnings balance of the credit union at the end of a quarter as determined under generally accepted accounting principles (12 C.F.R. § 702.2(f)).

Total Assets

For purposes of calculating net worth ratio, total assets means a credit union's total assets as measured by:

1. average quarterly balance, which is the average of quarter-end balances of the current and three preceding calendar quarters;
2. average monthly balance, which is the average of month-end balances over the three calendar months of the calendar quarter;
3. average daily balance, which is the average daily balance over the calendar quarter; or
4. quarter-end balance, which is the quarter-end balance of the calendar quarter as reported on the credit union's call report ((12 C.F.R. § 702.2(k)).

CUSIP Number

CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most securities, including: stocks of all registered U.S. and Canadian companies and U.S. government and municipal bonds. The CUSIP system facilitates the clearing and settlement process of securities. The number consists of nine characters (including letters and numbers) that uniquely identify a company or issuer and the type of security.

Quarterly Call Report

All regulated financial institutions in the United States are required

to file periodic financial and other information with their respective regulators and other parties. One of the key reports required to be filed is the quarterly Consolidated Report of Condition and Income, generally referred to as the “call report.” Call reports are due no later than 30 days after the end of each calendar quarter.

Related Bills

SB 827 (File 259), favorably reported by the Banks Committee, contains similar provisions related to QPDs.

SB 913 (File 188), favorably reported by the Banks Committee, contains similar provisions related to assignment of real property tax liens.

SB 5392 (File 276), favorably reported by the Banks Committee, contains similar provisions related to exchange facilitators.

SB 5638 (File 204), favorably reported by the Insurance and Real Estate Committee, contains similar provisions related to appraisal management companies.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/14/2013)