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## **OLR Bill Analysis**

### **sSB 911**

#### ***AN ACT CONCERNING MONEY TRANSMISSION, MORTGAGE SERVICERS AND CONSUMER COLLECTION AGENCIES.***

#### **SUMMARY:**

This bill makes numerous changes to the money transmission act, requirements for mortgage servicers, and consumer collection agency statutes.

Among the changes to the money transmission act, the bill expands licensing requirements; alters bonding, investment, and net worth requirements for these businesses; allows licensees to use authorized delegates, rather than agents, to conduct business; changes the information applicants and licensees must provide to the banking commissioner; and alters the exemptions from the act's provisions.

Among the changes to mortgage serving companies, the bill renames them "mortgage servicers"; expands the scope of services subject to licensure; adds new licensing, application, fee, bonding, and recordkeeping requirements; specifies standards of conduct for servicers; and provides the commissioner with authority to conduct investigations and examinations and take enforcement action against violators.

Among the changes to the consumer collection agency statutes, the bill subjects debt buyers to the same requirements as consumer collection agencies; expands licensing requirements; adds new fund management and recordkeeping requirements; requires consumer collection agencies to determine a debtor's legal obligation to pay collection fees; and requires consumer collection agencies to advise debtors that their debt may be uncollectible due to a statute of limitations.

The bill also makes conforming changes.

EFFECTIVE DATE: October 1, 2013, except the mortgage servicers portion of the bill has various effective dates; see relevant sections.

### **§§ 1-19 – THE MONEY TRANSMISSION ACT**

Generally, the money transmission act covers businesses, other than banks, that receive and transmit money. It requires these businesses to be licensed, imposes financial conditions on them, and subjects them to Banking Department oversight.

### **§§ 2 & 3 – Covered Activities**

Current law requires a license for someone who is in the business of (1) issuing Connecticut payment instruments or (2) receiving money for transmission or transmitting it by any means, or issuing stored value. The bill eliminates the distinction between these two businesses and incorporates both under the term “money transmission” business. It extends the licensure requirement to anyone (1) issuing or selling payment instruments or stored value including payment instruments that are checks or drafts and (2) advertising or soliciting money transmission services.

The bill deems someone to be engaged in the money transmission business in Connecticut if the person:

1. has a place of business in Connecticut,
2. receives money or monetary value (a) in Connecticut or (b) from a person located in Connecticut,
3. transmits money or monetary value (a) from a location in Connecticut or (b) to a person located in Connecticut,
4. issues stored value or payment instruments that are sold in Connecticut, or
5. sells stored value or payment instruments in Connecticut.

As under current law, conducting business without a license is a class D felony, punishable by up to five years in prison, a fine of up to \$5,000, or both.

**§§ 2 and 4 – Application Information**

The bill changes the information license applicants must provide to the banking commissioner. As under current law, applicants must provide information on a number of topics, including principal office location; information, including past criminal convictions, on the applicant and any partners, directors, trustees, officers, shareholders with at least 10% of each class of securities, or members; and material litigation in the last five years.

Instead of requiring the name and address of each branch, subsidiary, affiliate, or agent in the state engaged in the (1) business of selling or issuing Connecticut payment instruments or (2) money transmission business, the bill requires the name and address of each location and authorized delegate through which the licensee will engage in the money transmission business.

The bill also requires applicants to submit:

1. the name and address of any financial institution used for money transmission business in the state and
2. a sample of the contract showing the proposed arrangement between the applicant and any authorized delegate.

The bill also changes the audits and financial statements that applicants must provide. Currently, they must provide an audited, unconsolidated financial statement, including a balance sheet, receipts, and disbursements for the preceding year prepared by an independent certified public accountant acceptable to the commissioner.

The bill instead requires:

1. the applicant's audited financial statement for the most recent fiscal year;
2. if the applicant is a wholly-owned subsidiary of a corporation, the (a) applicant's or parent corporation's most recent audited consolidated annual financial statements and (b) applicant's

audited unconsolidated financial statement including balance sheet, receipts, and disbursements for the preceding year;

3. if the applicant is a publicly traded entity, the applicant's most recent 10-K report filed with the federal Securities and Exchange Commission (SEC) (an annual report on the company's performance);
4. if the applicant is a wholly owned subsidiary of a publicly traded company, the parent company's most recent 10-K report filed with the SEC; and
5. if the applicant or parent of a wholly-owned subsidiary is publicly traded on a foreign exchange, documents similar to the 10-K report filed with the appropriate securities regulator.

Current law requires the applicant to state whether he or she will engage in issuing money orders, travelers checks, or electronic payment instruments or the money transmission business. The bill instead requires the applicant to describe the type of money transmission business he or she will conduct.

***Outstanding Money Transmissions.*** Currently, applicants must provide the dollar amount of its outstanding payment instruments as of (1) the date of the financial statement it must file and (2) a date within 30 days of filing the application. The bill instead requires them to provide the dollar amount of any outstanding money transmissions.

It also alters when a payment instrument is considered "outstanding." Under current law, a money order, travelers check, electronic payment instrument, or stored value is considered "outstanding" if it is sold or issued in the U.S., the licensee received a report of it from its agent (or authorized delegate under the bill), and it has not yet been paid by the issuer. Under the bill, checks and drafts are considered outstanding under the same circumstances. The bill provides that for other types of money transmissions, "outstanding" means the value reported to the licensee for which the licensee or authorized delegate has received money or its equivalent from the

customer for transmission but has not completed the transmission by delivering the money or value to the person designated by the customer.

**§ 4 – Notices to Commissioner**

The bill requires an applicant seeking an initial or renewed license to give the commissioner notice of any change in information within 15 days of learning of it. Currently, changes must be reported promptly.

The law requires a licensee to provide written notice to the commissioner within one business day of having reason to know of certain convictions. Currently, this includes conviction of the licensee or a partner, director, trustee, principal officer, member, or shareholder owning at least 10% of each class of the licensee’s securities of a (1) misdemeanor involving money transmission or issuing Connecticut payment instruments or (2) felony. The bill also requires notice of indictments for these crimes.

Currently, an applicant must notify the commissioner of an agent’s felony conviction. The bill instead applies this notice requirement to crimes by authorized delegates and expands it to include a delegate’s (1) conviction of a misdemeanor involving money transmission and (2) indictment for one of these misdemeanors or a felony.

**§ 5 – Nonrefundable Fees**

The bill makes the initial license and license renewal fees nonrefundable. Current law requires the commissioner to refund the fee when an original license is denied, the commissioner refuses to renew a license, or an application is withdrawn before issuance or renewal. The license fee is \$2,250, except it is \$1,250 if paid more than a year before a license’s expiration. As under current law, applicants pay a nonrefundable \$625 investigation fee.

**§ 5 – Surrendering Licenses**

Currently, within 15 days of ceasing business in the state, a licensee must surrender its license to the commissioner in person or by registered or certified mail. The bill instead require written notice of

surrender to the commissioner and no longer specifies how the licensee must surrender the license. The bill requires the notice to (1) identify the location where the licensee's records will be stored and (2) provide the name, address, and phone number of an individual authorized to give access to the records. The bill specifies that surrendering the license does not reduce or eliminate the licensee's civil or criminal liability for acts or omissions before the surrender, including administrative actions by the commissioner to revoke or suspend a license, assess a civil penalty, order restitution, or exercise other authority.

#### **§ 6 – Application Approval**

Currently, the commissioner must conditionally approve a license application after making certain findings and give the applicant 30 days, which the commissioner can extend for cause, to meet the law's bonding or investment requirements and achieve final approval for a license. The bill eliminates the conditional approval process and requires an applicant to meet all of these requirements before the commissioner can issue a license.

#### **§ 6 – Application Denial for Specially Designated Nationals**

The bill allows the commissioner to deny an application if the applicant or any of its partners, directors, trustees, principal officers, major shareholders (at least 10% owners), or members is listed on the specially designated nationals and blocked persons list prepared by the U.S. Treasury Department. (The Treasury Department's Office of Foreign Assets Control publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers. Collectively, such individuals and companies are called "specially designated nationals" and their assets are blocked and U.S. persons are generally prohibited from dealing with them.)

#### **§ 7 – License Suspension for Unpaid Fee**

The bill requires the commissioner to automatically suspend an issued but not yet effective license renewal if the required investigation

or license fee is paid by ACH (automated clearing house, an electronic network for financial transactions) and returned. The law already requires this suspension when a fee is paid by a dishonored check.

### **§ 8 – Bond Requirements**

The bill changes bonding requirements for licensees. As under current law, the bond must be in favor of the commissioner. Under the bill, the bond runs concurrently with the license instead of being in force for the license period and two years after the license is surrendered, revoked, suspended, or expires.

The bill specifies that the bond is conditioned on the licensee's and its authorized delegates' (1) faithful performance of their obligations related to the money transmission business in the state and (2) conducting business in the state consistent with the laws.

The bill alters the bond requirements as displayed in Table 1.

Table 1: Bond Requirements for Licenses Under Current Law and the Bill

<b>Amount of bond</b>	<b>When Required Under Current Law</b>	<b>When Required Under the Bill</b>
\$300,000	Licensee has: <ul style="list-style-type: none"> <li>• average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of up to \$300,000 or</li> <li>• average weekly amount of money or monetary value received or transmitted (the greater of them) during the two previous reporting quarters of up to \$150,000</li> </ul>	For last year ending June 30, licensee has under \$300,000 average weekly amount of: <ul style="list-style-type: none"> <li>• money received or transmitted in the state and</li> <li>• stored value and payment instruments issued or sold in the state</li> </ul>
\$500,000	Licensee has: <ul style="list-style-type: none"> <li>• average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of more than \$300,000 but less than \$500,000 or</li> <li>• average weekly amount of money or monetary value received or transmitted (the</li> </ul>	For last year ending June 30, licensee has between \$300,000 and \$500,000 average weekly amount of: <ul style="list-style-type: none"> <li>• money received or transmitted in the state and</li> <li>• stored value and payment instruments issued or sold in the state</li> </ul>

	greater of them) during the two previous reporting quarters of more than \$150,000 but less than \$250,000	
\$1 million	<p>Licensee has:</p> <ul style="list-style-type: none"> <li>• average daily balance of outstanding Connecticut payment instruments during the two previous reporting quarters of \$500,000 or more or</li> <li>• average weekly amount of money or monetary value received or transmitted (the greater of them) during the two previous reporting quarters of \$250,000 or more</li> </ul>	<p>For last year ending June 30, licensee has over \$500,000 average weekly amount of:</p> <ul style="list-style-type: none"> <li>• money received or transmitted in the state and</li> <li>• stored value and payment instruments issued or sold in the state</li> </ul>

The law deems the licensee’s bond proceeds held in trust for benefit of claimants against the licensee’s faithful performance of its obligations. The bill alters the scope of the licensee’s obligations to match the bill’s expansion of the money transmission business and also makes the bond subject to an authorized delegate’s obligations. (The bill also makes these changes regarding the investments a licensee may make in place of some or all of the bond requirement.)

The law allows the commissioner to proceed on the bond against the principal, surety, or both to collect a civil penalty in Banking Department enforcement proceedings. The bill allows (1) the commissioner to collect restitution and unpaid costs of examining the licensee on the bond and (2) a person who may be damaged by the licensee’s or authorized delegate’s failure to perform their obligations in Connecticut to proceed against the bond to recover damages. The bill limits claims on the bond to those made within two years of the act, error, or omission that allegedly caused or resulted in damage.

The bill eliminates the commissioner’s authority to lower the amount required on a bond based on a licensee’s level of business and outstanding Connecticut payment instruments after a license is surrendered, revoked, suspended, or expires.

The bill:

1. allows the commissioner to require a new bond when there is an action on a bond;
2. requires a licensee to file a new bond immediately when there is a recovery on a bond; and
3. allows the commissioner to require additional bonds if the licensee's financial condition requires it, based on a reduction of tangible net worth, financial losses, or potential losses due to statutory violations (the licensee must file such bonds within 10 days of receiving written notice from the commissioner requiring them).

### **§ 9 – Investments**

Current law requires a licensee to maintain permissible investments with a value, using generally accepted accounting principles, of at least the aggregate amount of its outstanding Connecticut payment instruments and stored value. The bill instead requires the investment to at least equal all outstanding money transmissions in the state. The bill specifies that the value of receivables due from authorized delegates' proceeds from selling payment instruments that are not past due or doubtful of collection cannot exceed 30% of the permissible investments. It prohibits receivables due from one person from exceeding 10% of the permissible investments.

Under current law, these investments are held in trust for the licensee's faithful performance of his or her obligations. The bill alters the scope of the licensee's obligations to match the bill's definition of the money transmission business and also makes the investments subject to an authorized delegate's obligations.

### **§ 10 – Net Worth Requirements**

The bill changes the different net worth requirements set in current law for licensees. It subjects those who sell payment instruments to the net worth requirements and requires that calculations be based on tangible assets, which excludes intangible assets such as intellectual property rights.

Currently, licensees issuing Connecticut money orders must maintain a minimum \$100,000 net worth. The bill also applies this requirement to licensees issuing or selling checks or drafts.

Currently, licensee who issue stored value must maintain a minimum \$500,000 net worth. The bill increases the net worth requirement to \$1 million and retains the commissioner's authority to require a higher amount under generally accepted accounting principles.

The bill requires licensees that issue or sell other forms of money transmission to have a net worth of \$500,000, the requirement under current law for those issuing them.

### **§ 12 – Annual Information From Licensees**

The bill changes the information that licensees must provide to the commissioner each year.

Currently, they must provide the most recently audited unconsolidated financial statement, including balance sheets, receipts, and disbursements for the preceeding year, prepared by an independent certified public accountant acceptable to the commissioner. Instead, the bill requires:

1. the licensee's audited financial statement for the most recent fiscal year;
2. if the licensee is a wholly-owned subsidiary of a corporation, the (a) parent corporation's or licensee's most recently audited consolidated annual financial statements and (b) licensee's most recently audited, unconsolidated financial statement, including balance sheets, receipts, and disbursements for the preceeding year;
3. if the licensee is a publicly traded entity, the licensee's most recent 10-K report filed with the SEC; and
4. if the licensee or parent of a wholly-owned subsidiary is publicly

traded on a foreign exchange, documents similar to the 10-K report filed with the appropriate securities regulator.

The bill also makes conforming changes to reflect the bill's changes to the definition of the money transmission business.

**§ 13 – Compliance with Federal Reporting Law**

The law requires licensees to comply with the federal Currency and Foreign Transactions Reporting Act (which requires reporting to combat money laundering and other criminal activities) and any regulations under it. The bill requires a licensee, at the commissioner's request, to provide proof of compliance with the federal law. The bill makes a violation of the federal law or its regulations also a violation of the money transmission act and a basis for an enforcement action by the commissioner.

**§§ 2, 3, 11, 14-15, & 19 – Authorized Delegates**

Instead of allowing licensees to conduct business through agents, the bill allows them to do so through authorized delegates. The bill defines an authorized delegate as a person designated by a licensee to provide money transmission services on the licensee's behalf. It requires delegates to only work with licensed entities. It prohibits them from working with an entity exempt from licensing, which current law allows for an agent.

The bill requires licensees to notify the commissioner of all their authorized delegates. Under current law, agents cannot engage in business for a licensee through subagents. The bill only allows authorized delegates to engage in business through other authorized delegates of the same licensee. Currently, the licensee and agent must notify the commissioner in writing if they terminate their contract. The bill only requires the licensee to provide this notice if a licensee-authorized delegate contract is terminated.

The bill applies many of the rules that currently apply to agents to authorized delegates, including that:

1. they do not need a license but must have a contract with a

- licensee and only provide services within the contract's scope,
2. they hold proceeds in trust for licensees and must remit money under the contract's terms,
  3. licensees are liable for any loss to a purchaser or holder of a payment instrument or stored value sold in Connecticut due to an authorized delegate's failure to forward the amount due,
  4. their contracts are ineffective when a licensee's license is suspended,
  5. licensees must provide delegates with policies and procedures to ensure compliance with the law,
  6. the commissioner can examine them, and
  7. the commissioner can terminate the relationship between the delegate and licensee.

Under current law, one of the reasons the commissioner can order a licensee to terminate its relationship with an agent is the agent's refusal to allow an examination of its books and records. The bill instead applies this to authorized delegates when the delegate fails to cooperate with an examination or investigation by the commissioner. It also allows the commissioner to terminate the relationship when an authorized delegate is convicted of an act involving fraud or dishonesty.

**Notice of Changes.** The bill requires a licensee to notify the commissioner in writing within 15 days of any change in the licensee's list of authorized delegates or locations where the licensee or its authorized delegates engage in the money transmission business in Connecticut. The notice must state the name of each delegate and its location.

### **§§ 15 & 18 – Records Requirements**

The bill requires licensees to maintain and prepare records that enable the commissioner to determine whether the licensee and its

authorized delegates are complying with the law. The records must be at the office named in the license. At the commissioner's request, the licensee must make the records available at that office or send them to the commissioner within five business days by (1) registered or certified mail, return receipt requested or (2) express delivery carrier that provides a dated delivery receipt. The commissioner can grant additional time on request.

The bill requires licensees to maintain for at least five years:

1. a record of each payment instrument or stored value obligation sold in Connecticut;
2. a general ledger posted at least monthly with all asset, liability, capital, income, and expense accounts;
3. bank statements and reconciliation records;
4. records of outstanding money transmissions in Connecticut;
5. records of each payment instrument and stored value obligation paid in the last five years;
6. the last known names and addresses of all authorized delegates;  
and
7. other records the commissioner requires.

As with other violations of the money transmission act, the bill makes violations of these provisions grounds to suspend, refuse to renew, or revoke a license.

**§ 16 – Exclusions from Act's Provisions**

Under current law, the money transmission act's provisions generally do not apply to federally insured federal banks, out-of-state banks, federal credit unions, and out-of-state credit unions unless they act through an agent that is not (1) one of these entities or (2) a Connecticut credit union. The bill instead provides that the act does not apply to these entities if they do not act through anyone (1) who is

not one of these types of entities or a Connecticut bank or credit union, (2) licensed under the money transmission act or one of their authorized delegates, or (3) exempt from licensure.

Under current law, Connecticut banks and credit unions are generally exempt from the act. The bill exempts them under the same conditions as the other entities listed above.

The law also generally exempts the U.S. Postal Service from the money transmission act's provisions. The bill exempts contractors who engage in the business of money transmission in Connecticut on the service's behalf.

As under current law, someone is exempt if their only activity is electronic funds transfers of government benefits for or on behalf of a federal, state, other government, or quasi-governmental agency or government-sponsored enterprise.

While current law exempted these entities from most of the act's provisions, it required them to follow provisions on agents, including authorizing them to conduct business through agents, making them liable for losses, establishing agents' duties to hold and remit money, and contract requirements. The bill provides that exempt entities are not required to follow these provisions as applied to authorized delegates under the bill.

### **§ 17 – Regulations**

The bill extends the commissioner's authority to adopt regulations to cover new provisions added by the bill.

## **§§ 20-43 – MORTGAGE SERVICERS**

### **§ 20 – Definition**

By law a mortgage servicing company is any person, who services a first mortgage loan. The bill retitles the term "mortgage servicing company" to "mortgage servicer" and expands the scope of services to include (1) residential mortgage loans beyond the first loan, (2) home equity conversion mortgages, and (3) reverse mortgages.

The bill specifies that the following are not mortgage servers:

1. anyone exempt from licensure as a mortgage lender or mortgage correspondent lender while servicing residential mortgage loans, including bona fide non-profits and small loan lenders;
2. a person servicing no more than five residential mortgage loans within any consecutive 12 months; and
3. any federal, state or municipal government agency, or any quasi-governmental agency authorized by state or federal law to service residential mortgage loans.

By law a “mortgagor” is any person who is obligated to repay a first mortgage loan. The bill limits this to first residential mortgage loans.

The bill defines "mortgagee" as the grantee of a residential mortgage or the last person to whom the residential mortgage has been assigned of record. A “residential mortgage loan” is any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a (1) single or multi-family (up to four units) residence located in Connecticut or (2) real property that is located in the state and slated as the future site for residential home(s).

EFFECTIVE DATE: October 1, 2013

### **§ 23 – Licensure Requirement**

The bill requires any person acting as a mortgage servicer to obtain a license from the banking commissioner for its main office and each branch office from which it conducts business.

The bill exempts the following from the mortgage servicer licensing requirements:

1. any bank, out-of-state bank, Connecticut credit union, federal credit union or out-of-state credit union, provided such bank or credit union is federally insured, any operating subsidiary of a

federal bank or federally-chartered out-of-state bank or any wholly-owned subsidiary of a Connecticut bank or Connecticut credit union; and

2. any person licensed as a mortgage lender in this state while acting as a mortgage servicer from a location licensed as a main office or branch office.

It repeals provisions related to the banking commissioner's powers to take action against a mortgage servicing company for failing to provide services, including paying the mortgagor's taxes and insurance premiums from the designated escrow account. The bill provides new enforcement authority.

EFFECTIVE DATE: January 1, 2014

## **§ 24 – Application Requirements**

### ***Prerequisites to Licensure***

The bill allows the commissioner to issue a mortgage servicer license only if the applicant:

1. has identified a someone within its main office and each branch office who (a) has supervisory authority over the mortgage servicer activities at his or her office location and (b) has at least three years' experience in the mortgage servicing business within the five years immediately preceding the date of the application (here after referred to as qualified individual);
2. the control persons of the applicant, the qualified individual and any branch manager with supervisory authority at the office for which the license is sought have not been convicted of, or pled guilty or nolo contendere to (a) a felony during the seven-year period before the date of the application, or (b) a felony involving an act of fraud or dishonesty, a breach of trust or money laundering in a domestic, foreign, or military court at any time before the date of application;
3. demonstrates that the financial responsibility, character, and

general fitness of the applicant, the control persons of the applicant (see BACKGROUND), the qualified individual, and any branch manager having supervisory authority over the office for which the license is sought warrant a determination that the applicant will operate honestly, fairly, and efficiently, and consistent with the bill's and law's purpose;

4. has met the bill's surety bond requirement; and
5. has not made a material misstatement in the application.

The bill prohibits the commissioner from issuing a license if he fails to make such findings and requires him to notify the applicant of the denial and the reasons for such denial.

The bill defines "experience in the mortgage servicing business" as paid experience in the servicing of mortgage loans, the accounting, receipt and processing of payments on behalf of mortgagees or creditors, or the supervision of such activities, or any other relevant experience as determined by the commissioner.

The bill does not consider pardons and expungements under Connecticut law to be convictions for the purpose of a mortgage servicer license application. It specifies that the level and status of such events must be determined by the law of the jurisdiction where the case was prosecuted. If such jurisdiction does not use the term "felony," "pardon," or "expungement," then legally equivalent terms apply.

### ***Application***

An applicant for a mortgage servicer license or renewal of such license must:

1. file an application form, prescribed by the commissioner, along with the required \$1,000 licensing fee with the Nationwide Mortgage Licensing System and Registry (see "system" in BACKGROUND);

2. furnish the system information concerning the identity of the applicant, any control person of the applicant, the qualified individual, and any branch manager, including personal history and experience in a form prescribed by the system; and
3. furnish information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

The applicant must promptly notify the commissioner, in writing, of any change to the information submitted in connection with its application.

The bill specifies that evidence of experience of the qualified individual and any branch manager must include:

1. a statement specifying the duties and responsibilities of the person's employment, the term of employment, including month and year, and the name, address, and telephone number of a supervisor, employer or, if self-employed, a business reference; and
2. if required by the commissioner, copies of W-2 forms, 1099 tax forms or, if self-employed, 1120 corporate tax returns, signed letters from the employer on the employer's letterhead verifying such person's duties and responsibilities and term of employment, including month and year, and, if such person is unable to provide such letters, other proof satisfactory to the commissioner that such person meets the experience requirement.

The bill allows the commissioner to (1) conduct a criminal history records check of the applicant, any control person of the applicant, the qualified individual and any branch manager with supervisory authority at the office for which the license is sought and (2) require the applicant to submit fingerprints as part of the application.

### ***License Renewal***

An applicant seeking to renew a mortgage servicer license must (1)

continue to meet the minimum standards for licensure, and (2) pay the required renewal fees. The license expires if the minimum standards for renewal are not met.

The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the system.

The commissioner may automatically suspend a mortgage servicer license if payment of the required fees is returned or not accepted. The commissioner must (1) give the licensee notice of the automatic suspension, pending proceedings for revocation or refusal to renew set out in the bill and an opportunity for a hearing, and (2) require the licensee to take or refrain from taking action as specified by the commissioner.

#### ***Withdrawn or Abandoned Application***

An applicant who wishes to withdraw an application for a license must submit a notice of such intent to the commissioner. The withdrawal becomes effective when the notice is received by the commissioner. The bill allows the commissioner to deny a subsequent license up to one year after the effective date of withdrawal.

The bill allows the commissioner to deem an application abandoned if the applicant fails to respond to any request for information required by law. The commissioner must notify the applicant, on the system, that if the information is not submitted within 60 days from the request date, the application will be deemed abandoned. Application fees for abandoned applications must not be refunded. However, the bill allows the applicant to submit a new application.

#### ***Annual Application Filing***

The bill requires a mortgage servicer to file with the commissioner, at least annually, (1) a current schedule of the ranges of costs and fees it charges mortgagors for its servicing-related activities, and (2) a report in a form and format acceptable to the commissioner detailing the mortgage servicer's activities in the state, including:

1. the number of residential mortgage loans the mortgage servicer is servicing;
2. the type and characteristics of the loans;
3. the number of serviced loans in default, along with a breakdown of 30-day, 60-day, and 90-day delinquencies;
4. information on loss mitigation activities, including details on workout arrangements undertaken; and
5. information on foreclosures commenced in the state.

EFFECTIVE DATE: November 1, 2013

### **§ 25 – Filing Requirements**

The bill specifies various filing requirements concerning a mortgage servicer license, including (1) the process for surrendering a license, (2) name requirements, and (3) the timeframe within which the commissioner must be notified of certain events.

### ***Transferability and Surrender of License***

The bill prohibits the transfer or assignment of a mortgage servicer license. A licensee must file a request, on the system, to surrender the license for each office at which the licensee intends to cease to do business, within 15 days after it ceases acting as a mortgage servicer. The surrender takes effect when the commissioner accepts the request.

### ***Name and Address***

A licensee must use its legal name, unless the commissioner disapproves, or a fictitious name approved by the commissioner.

A mortgage servicer licensee may change its name or the address of any office specified on the most recent filing with the system if (1) the licensee files such change, with the system, at least 30 calendar days prior to the change, and (2) the commissioner does not disapprove such change, in writing, or request further information within the 30-day period. In the case of a main office or branch office, the licensee must provide the commissioner, a bond rider or endorsement, or

addendum, as applicable, to the surety bond on file that reflects the new name or address of the main office or branch office.

***Other Filing Requirements***

The mortgage servicer licensee must promptly file with the system or, if the information cannot be filed on the system, directly notify the commissioner, in writing, if the licensee:

1. files for bankruptcy, or the consummation of a corporate restructuring, of the licensee;
2. is criminally indicted, or receives notice that any of the licensee's officers, directors, members, partners or shareholders owning 10% or more of the outstanding stock is indicted for or convicted of a felony;
3. receives notice of the institution of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action by any governmental agency against the licensee and the reasons for such action;
4. receives notice that the attorney general of this or any other state has initiated an action, presumably against the licensee, and the reasons for it;
5. knows that its status as an approved seller or servicer has been suspended or terminated by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Government National Mortgage Association;
6. receives notice that certain servicing rights of the licensee will be rescinded or cancelled, and the reasons for it;
7. receives notice that any of the licensee's officers, directors, members, partners or shareholders owning 10% or more of the outstanding stock of the licensee has filed for bankruptcy;
8. receives notice of a consumer class action lawsuit against the licensee that is related to the operation of the licensed business;

or

9. any change in the information most recently submitted by the licensee in connection with its application.

EFFECTIVE DATE: November 1, 2013

**§ 26 – Terms and Fees**

A mortgage servicer license expires at the close of business on December 31 of the year in which it is approved, unless the license is renewed or the license was approved on or after November 1, in which case it expires at the close of business on December 31 of the year following the year in which it is approved.

Renewal applications must be filed between November 1 and December 31 of the year in which the license expires. A license fee of \$1,000 along with any required fees or charges must be paid to the system for an initial license or renewal. All fees are nonrefundable and cannot be prorated.

EFFECTIVE DATE: November 1, 2013

**§ 27 – Bond Requirements**

An applicant or licensee must file, with the commissioner, a \$100,000 surety bond. The bond must be written by a surety authorized to write such bonds in the state covering its main office and any branch office. The bond must run concurrently with the period of the license for the main office. The aggregate liability under the bond must not exceed \$100,000.

The required bond must be (1) in a form approved by the attorney general, and (2) conditioned upon the mortgage servicer licensee faithfully performing any and all written agreements or commitments with or for the benefit of mortgagors and mortgagees, truly and faithfully accounting for all funds received from a mortgagor or mortgagee by the licensee in the licensee's capacity as a mortgage servicer, and conducting such mortgage business in compliance with the law.

Any mortgagor or mortgagee may proceed on such bond against the principal or surety of the bond, or both, to recover damages. The commissioner may proceed on such bond against the principal or surety of the bond, or both, to collect (1) any civil penalty imposed upon a licensee and (2) any unpaid costs of examination of a licensee.

Under the bill, bond proceeds are deemed to be held in trust for the benefit of claimants in the event of bankruptcy of the principal and must be immune from attachment by creditors and judgment creditors.

The bill requires the principal to notify the commissioner of the commencement of an action on the bond. When an action is commenced on a principal's bond, the commissioner may require the filing of a new bond. The principal must file a new bond immediately upon recovery on any action on the bond.

#### ***Cancellation of the Bond***

The surety company may cancel the bond at any time by a written notice to the principal and the commissioner stating the effective date of the cancellation. The notice must be sent by certified mail to the principal at least 30 days prior to the date of cancellation. The commissioner must give the principle notice of the pending cancellation and suspend the principal's license on the date of cancellation.

Automatic suspension or inactivation is halted if, prior to the effective date of the bond cancellation, (1) the principal submits a letter of reinstatement of the bond from the surety company or a new bond or (2) the mortgage servicer licensee has ceased business in the state and has surrendered all licenses.

The commissioner must (1) give a licensee notice of an automatic suspension, pending proceedings for revocation or refusal to renew and an opportunity for a hearing, and (2) require the licensee to take or refrain from taking action as specified by the commissioner.

EFFECTIVE DATE: November 1, 2013

**§ 28 – Records Retention**

A mortgage servicer licensee must (1) maintain adequate records of each residential mortgage loan transaction at the office named in the license, or, (2) if requested by the commissioner, make the records available at such office or send them to the commissioner within five business days of the request, by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The commissioner may grant additional time. The records must provide the following information:

1. an adequate loan history for residential mortgage loans upon which payments are received or made by the mortgage servicer, itemizing the amount and date of each payment and the unpaid balance at all times;
2. the original or an exact copy of the note, residential mortgage, or other evidence of indebtedness and mortgage deed;
3. the name and address of the mortgage lender, mortgage correspondent lender, and mortgage broker, if any, involved in the residential mortgage loan transaction;
4. copies of any disclosures or notification provided to the mortgagor required by state or federal law;
5. a copy of any bankruptcy plan approved in a proceeding filed by the mortgagor or a co-owner of the property subject to the residential mortgage loan;
6. a communications log which documents all verbal communication with the mortgagor or the mortgagor's representative; and
7. a copy of all notices sent to the mortgagor related to any foreclosure proceeding filed against the encumbered property.

The bill requires the licensee to retain the records of each residential mortgage loan transaction for at least two years following the final

payment on each residential mortgage loan it services or the assignment of such loan, whichever occurs first, or any longer period required by law.

The bill also requires every licensee to keep and use books, accounts, and records that will enable the commissioner to determine whether such licensee is complying with the provisions of the mortgage servicers law.

EFFECTIVE DATE: November 1, 2013

**§ 29 – Assignment and Disclosure Requirements**

The bill requires a mortgage servicer who has assigned the servicing rights on a residential mortgage loan, to disclose to the mortgagor (1) any notice required by the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.) and related regulations within the prescribed time periods; and (2) a schedule of the ranges and categories of the servicer's costs and fees for servicing-related activities, which must comply with state and federal law and cannot exceed those reported to the commissioner if the servicer is a licensee.

EFFECTIVE DATE: January 1, 2014

**§§ 30-32 – Standards of Conduct**

**Standard of Care**

A mortgage servicer must act with good faith and fair dealing in its communications, transactions, and course of dealings with each mortgagor in connection with the servicing of the mortgagor's residential mortgage loan, and must:

1. safeguard and account for any money handled for the mortgagor;
2. follow reasonable and lawful instructions from the mortgagor consistent with the underlying note and residential mortgage loan;
3. act with reasonable skill, care, and diligence;

4. promptly provide the mortgagor with an accurate statement of account;
5. make mortgagors in default aware of loss mitigation options and services offered by the mortgage servicer;
6. provide trained personnel and telephone facilities sufficient to respond promptly to mortgagor inquiries and complaints regarding the mortgagor's residential mortgage loan; and
7. pursue loss mitigation with the mortgagor whenever possible.

***Violation of Federal Law***

A mortgage servicer must comply with all applicable federal laws and regulations relating to mortgage loan servicing and allows the commissioner to, in addition to any other remedies provided by law, take enforcement action for any such violation.

***Limitations on Mortgage Servicer Fees***

A mortgage servicer must maintain and keep current a schedule of standard or common fees that it charges mortgagors. The schedule must (1) identify each fee, (2) provide a plain English explanation of the fee, and (3) state the amount of the fee or range of amounts or, if there is no standard fee, how the fee is calculated or determined. A mortgage servicer must make its schedule available to the mortgagor or the mortgagor's authorized representative upon request.

A mortgage servicer may collect a fee only for services actually rendered and when it:

1. is expressly authorized and clearly and conspicuously disclosed by the residential mortgage loan instruments and not prohibited by law;
2. is expressly permitted by law and not prohibited by the residential mortgage loan instruments; or
3. is not prohibited by law or the residential mortgage loan instruments and is a reasonable fee for a specific service

requested by the mortgagor that is assessed only after clear and conspicuous disclosure of the fee is provided to the mortgagor and the mortgagor expressly consents to pay the fee in exchange for the services.

The bill also prohibits attorney's fees charged in connection with a foreclosure action from exceeding reasonable and customary fees for such work. If a foreclosure action is terminated prior to the final judgment and sale for a loss mitigation option, a reinstatement or payment in full, the mortgagor is only liable for reasonable and customary fees for work actually performed.

The bill prohibits any late fee or delinquency charge when (1) the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and (2) the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period.

It prohibits late charges (1) in excess of the past due amount, (2) being collected from the escrow account or from escrow surplus without the approval of the mortgagor, or (3) being deducted from any regular payment.

EFFECTIVE DATE: January 1, 2014

**§ 33 – Prohibited Practices**

The bill prohibits a mortgage servicer from:

1. directly or indirectly employing any scheme, device, or artifice to defraud or mislead mortgagors or mortgagees or to defraud any person;
2. engaging in any unfair or deceptive practice toward any person or misrepresenting or omitting any material information in connection with the servicing of the residential mortgage loan;
3. obtaining property by fraud or misrepresentation;
4. using any unfair or unconscionable means in servicing a

- residential mortgage loan;
5. knowingly misapplying or recklessly applying residential mortgage loan payments to the outstanding balance of a residential mortgage loan;
  6. knowingly misapplying or recklessly applying payments to escrow accounts;
  7. placing hazard, homeowner's, or flood insurance on the mortgaged property when the mortgage servicer knows or has reason to know that the mortgagor has an effective policy for such insurance;
  8. failing to comply with a request for a payoff or reinstatement statement, charging excessive or unreasonable fees to provide loan payoff information, or failing to provide loan payoff information promptly upon receipt of a written request;
  9. knowingly or recklessly providing inaccurate information to a credit bureau, causing harm to a mortgagor's creditworthiness;
  10. failing to report both the favorable and unfavorable payment history of the mortgagor to a nationally recognized consumer credit bureau at least annually if the mortgage servicer regularly reports information to a credit bureau;
  11. collecting private mortgage insurance beyond the date for which private mortgage insurance is required;
  12. knowingly or recklessly facilitating the illegal foreclosure of real property collateral;
  13. failing to issue a release of mortgage;
  14. failing to provide written notice to a mortgagor upon taking action to place hazard, homeowner's or flood insurance on the mortgaged property, including a clear and conspicuous statement of the procedures by which the mortgagor may

demonstrate that such mortgagor has the required insurance coverage and by which the mortgage servicer shall terminate the insurance coverage placed by it and refund or cancel any insurance premiums and related fees paid by or charged to the mortgagor;

15. placing hazard, homeowner's, or flood insurance on mortgaged property, or requiring a mortgagor to obtain or maintain such insurance, in excess of the replacement cost of the improvements on the mortgaged property as established by the property insurer;
16. failing to provide to the mortgagor a refund of unearned premiums paid by a mortgagor or charged to the mortgagor for hazard, homeowner's, or flood insurance placed by a mortgagee or the mortgage servicer if the mortgagor provides reasonable proof that the mortgagor has obtained coverage such that the forced placement insurance is no longer necessary and the property is insured (if the mortgagor provides reasonable proof that no lapse in coverage occurred, the mortgage servicer must promptly refund the entire premium);
17. requiring funds to be remitted by means more costly to the mortgagor than a bank or certified check or attorney's check from an attorney's account;
18. refusing to communicate with a mortgagor's authorized representative who provides a written authorization signed by the mortgagor (licensee is allowed to adopt procedures to verify that the representative is authorized to act on behalf of the mortgagor);
19. conducting any business as a mortgage servicer without holding a valid license, or while assisting or aiding and abetting any person in the conduct of business without a valid license;
20. negligently making any false statement or knowingly and willfully making any omission of a material fact in connection

with any information or reports filed with a governmental agency or the system, or in connection with any investigation conducted by the commissioner or another governmental agency;

21. collecting, charging, attempting to collect or charge, or using or proposing any agreement purporting to collect or charge any fee prohibited by law.

A violation of these requirements is deemed an unfair or deceptive trade practice and may be enforceable under the Connecticut Unfair Trade Practices Act (CUTPA).

EFFECTIVE DATE: January 1, 2014

**§§ 34 & 36 & 40 – Investigation and Examination**

The commissioner may conduct investigations and examinations for purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with the law. He may also investigate violations or complaints as often as he deems necessary.

The commissioner (1) must have full access to any books, accounts, records, files, documents, information or evidence relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence; and (2) may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required or any books, accounts, records, files or documents the commissioner deems relevant.

A licensee or anyone subject to this bill is required to make or compile reports or prepare other information as directed by the commissioner.

The commissioner may (1) control access to any documents and records of the licensee or person under examination or investigation, and (2) take possession of the documents and records or place a person

in exclusive charge of the documents and records in the place where they are usually kept. The bill prohibits the removal or attempted removal of any of the documents and records during the control period, except by court order or with the commissioner's consent. The mortgage servicer licensee or owner of the documents and records must have access to the documents or records as needed to conduct ordinary business, unless the commissioner has reason to believe that the documents or records are at risk of being altered or destroyed.

Under the bill, the commissioner may:

1. retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators to conduct or assist in conducting examinations or investigations;
2. enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under its authority;
3. use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the mortgage servicer licensee;
4. accept and rely on examination or investigation reports made by other government officials, within or without this state; and
5. accept audit reports made by an independent certified public accountant for the mortgage servicer licensee in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation or other writing of the commissioner.

A mortgage servicer licensee or person subject to investigation or examination under this bill cannot knowingly withhold, abstract,

remove, mutilate, destroy, or conceal any books, records, computer records or other information.

Licensees must pay the actual cost of any examination of the licensee, as determined by the commissioner. The commissioner may suspend the license for nonpayment after 60 days.

EFFECTIVE DATE: November 1, 2013, except the requirement for a licensee to pay the cost for an examination is effective October 1, 2013

**§ 35 – Enforcement**

The commissioner may suspend, revoke or refuse to renew any mortgage servicer license or take any other action (1) for any reason which would be sufficient grounds for him to deny an application for the license or (2) if the commissioner finds that the licensee, any control person of the licensee, the qualified individual or any branch manager with supervisory authority, or trustee, employee or agent of such licensee has done any of the following:

1. made any material misstatement in the application;
2. committed any fraud or misrepresentation or misappropriated funds;
3. violated any of the provisions of the banking statutes or of any related regulations, or any other law or regulation applicable to the conduct of its business; or
4. failed to perform any agreement with a mortgagee or a mortgagor.

The commissioner may take any action allowed under state banking laws against any person whenever it appears to him that such person has violated, is violating, or is about to violate the law. By law such actions include sending notice of a violation after holding an investigation, offering a hearing on the matter, civil penalties up to \$100,000 per violation, orders of restitution, and other actions.

The bill allows the commissioner to adopt implementing

regulations.

EFFECTIVE DATE: November 1, 2013

**§§ 38-42 & 21-22 – Conforming Changes**

The bill makes numerous conforming changes to reflect the retitled term (mortgage servicer) and its revised definition.

EFFECTIVE DATE: October 1, 2013

**§§ 44-49 – CONSUMER COLLECTION AGENCIES**

**§ 44 – Definition**

The bill brings debt buyers under the jurisdiction of the consumer collection agency statutes by amending the definition of “consumer collection agency” to include any person who buys debt that is delinquent or in default and then engages in the business of collecting on such debt.

Under current law, a consumer collection agency is generally any person engaged in the business of collecting or receiving (1) payment for others of any account, bill, or other indebtedness from a consumer, or (2) payment for property tax from a property tax debtor on behalf of a municipality.

**§ 45 – Licensure Requirements**

By law, a person acting as a consumer collection agency in Connecticut must obtain a license from the Banking Department. The bill requires a person to obtain a license for both the main office and each branch office where such business is conducted.

Current law allows the commissioner to issue a license if (1) he is satisfied that the applicant is properly qualified and trustworthy in all respects and (2) granting the license is not against the public interest. The bill instead allows the commissioner to issue a license only if:

1. applicants, partners, members, officers, directors, and principal employees (i.e., related persons) demonstrate financial responsibility, character, reputation, integrity, and general

fitness to warrant the belief that the applicant will operate soundly, efficiently, in the public interest, and consistent with the law's purposes and

2. the applicant is financially solvent (e.g., not involved in bankruptcy or receivership proceedings).

The bill requires the commissioner to deny a license if he fails to make such findings and requires him to notify an applicant of the reasons for such a denial.

The bill also makes a conforming change.

#### **§ 46 – Records Retention**

The bill requires each consumer collection agency to maintain its consumer debtor and creditor records for at least two years after (1) the final entry date or (2) if the agency collects child support, the last payment date.

The records must clearly identify all consumer debtors' payment amounts and dates and remittances made to creditors. Agencies collecting child support must also keep originals or copies of the agreements they entered into with creditors owed the child support. These records must follow generally accepted accounting practices and be made available to the Banking Commissioner.

The bill also requires each third party consumer collection agency to deposit funds it collects on behalf of others in one or more trust accounts in a Connecticut financial institution (e.g., bank or credit union). The accounts must be reconciled monthly and cannot be comingled with the agency's funds or used by the agency to conduct business. The bill specifies that these accounts may be used only to: (1) deposit funds received from consumer debtors (using generally accepted accounting practices), (2) pay these funds to creditors, (3) refund overpayments to consumer debtors, and (4) pay consumer collection agency fees monthly. The bill requires any withdrawal from the account, other than for these specified reasons, to be reimbursed by the consumer collection agency within 30 days after the withdrawal.

**§ 48 – Prohibited Practices**

The bill removes the current prohibition on consumer collection agencies from (1) purchasing claims for the purpose of collection or filing a law suit and (2) comingling money collected for a creditor, claimant, or forwarder with its own funds or using the money to conduct business.

The law prohibits a consumer collection agency from charging a consumer a fee when collecting a debt, unless the consumer is legally liable for the fee. In this case, the fee cannot exceed 15% of the amount collected. The bill requires the agency to obtain from the creditor a copy of any contract or agreement between the consumer and creditor to determine if the consumer is legally liable for the fee. It also allows the agency to charge the consumer a fee for court costs, which is not subject to the 15% limit.

The bill prohibits a consumer collection agency from failing to inform a consumer in its initial communication that it is collecting a debt that is beyond the statute of limitation. Specifically, the agency must inform the consumer that (1) the law limits the time within which it can bring a lawsuit against the consumer regarding the debt and (2) because of the debt's age, the agency will not bring such a lawsuit, but may report the debt to credit reporting agencies as unpaid unless the debt has passed the time limit under federal law for doing so (see BACKGROUND).

**§§ 47 & 49 – Enforcement**

The bill requires each consumer collection agency to comply with the federal Fair Debt Collection Practices Act. It allows the banking commissioner to take certain enforcement actions against an agency who fail to do so, including license suspension, revocation, and non-renewal.

The bill also allows the commissioner to issue a cease and desist order to a consumer collection agency he believes is engaging in unfair or deceptive practices. The law already allows him to impose a civil penalty for such a violation.

## **BACKGROUND**

### ***System***

“System” means the Nationwide Mortgage Licensing System and Registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage lenders, mortgage correspondent lenders, mortgage brokers, mortgage loan originators, and loan processors or underwriters (CGS § 36a-485).

### ***Control Person***

“Control person” means an individual that directly or indirectly exercises control over another person. “Control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise (CGS § 36a-485).

### ***Information Excluded from Consumer Reports***

The federal Fair Credit Reporting Act prohibits a consumer reporting agency from reporting accounts that have been (1) charged off (i.e., the original creditor deems it uncollectable), (2) placed for collection, (3) or subject to similar action (e.g., delinquent debts) that are more than seven years old, unless it involves a credit transaction of \$150,000 or more. The seven-year period starts 180 days from the date of the original delinquency (15 U.S.C § 1681c(i)).

### ***Related Bills***

The Banks Committee favorably reported sSB 826 on March 14, 2013, which authorizes the commissioner to use the Nationwide Mortgage Licensing System and Registry for licensing or registration of any person engaged in the financial services industry within the jurisdiction of the commissioner.

The Banks Committee favorably reported sHB 6173 on March 14, 2013, which expands the definition of “creditor” to include “debt buyers” making them subject to the statutory requirements applicable to creditors.

**COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/14/2013)