
OLR Bill Analysis

sHB 5353

AN ACT CONCERNING MORTGAGE SERVICERS, CONNECTICUT FINANCIAL INSTITUTIONS, CONSUMER CREDIT LICENSES, THE FORECLOSURE MEDIATION PROGRAM AND MINOR REVISIONS TO THE BANKING STATUTES.

SUMMARY:

This bill makes numerous unrelated changes. Among other things, it:

1. renames mortgage servicing companies “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 actions against violators;
2. limits the exemptions from mortgage lender, mortgage correspondent lender, mortgage broker, and debt negotiator licensure that apply to certain subsidiaries of banks and credit unions;
3. establishes procedural requirements for a Connecticut bank that proposes to close a loan production office;
4. prohibits the transfer and assignment of a business and industry development corporation’s license;
5. allows certain New Jersey and Pennsylvania banks to join a group of banks that own Connecticut-chartered “bankers’ bank”;
6. expands the definition of an “automatic teller machine” to include those equipped with a telephone or televideo device that

- allows contact with bank employees;
7. extends the banking commissioner's authority to use the Nationwide Mortgage Licensing System and Registry, authorizes the system to receive and maintain licensing and registration records, and establishes filing, licensing, fees, reports and other system procedures and requirements;
 8. narrows the scope of the exemption from mortgage loan originator licensure that applies to certain attorneys;
 9. increases the prelicensing and continuing education and testing requirements for mortgage lenders, mortgage correspondent lenders, and mortgage brokers;
 10. extends the state's foreclosure mediation program by four years, until July 1, 2018;
 11. limits the automatic suspension of a consumer collection agency license due to a dishonored payment of licensing fees; and
 12. establishes a mechanism for specified business entities to change their entity type.

The bill also makes technical and conforming changes and corrects improper references (§§ 2 & 3, 23 & 24, and 42-46).

EFFECTIVE DATE: Various, see section-by-section analysis below.

§§ 1-20 AND 23 & 24 MORTGAGE SERVICERS

§ 1 — Definition

By law, a mortgage servicing company is any person, who services a first mortgage loan. The bill changes 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 defines a "branch office" as a location other than the main office at which a licensee or any person on the licensee's behalf acts as

a mortgage servicer.

Under current law, a “mortgagor” is any person who is obligated to repay a first mortgage loan. The bill expands this beyond the first loan, but limits it to 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 located in the state and slated as the future site for residential home(s).

Under the bill, “system” means the Nationwide Mortgage Licensing System and Registry, NMLS, NMLSR or any other name or acronym that may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

EFFECTIVE DATE: October 1, 2014

§ 4 — *Licensure Requirement*

The bill generally 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, effective January 1, 2015.

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, if it is federally insured, any wholly owned subsidiary of a federal bank, or federally

chartered out-of-state bank, or of any Connecticut bank, or Connecticut credit union, or any operating subsidiary of a federal bank, federally chartered out-of-state bank or any wholly owned subsidiary of a Connecticut bank or credit union where each owner of the operating or wholly owned subsidiary is wholly owned by the same bank 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, if the person meets the bond and errors and omissions coverage requirements. This exemption does not apply when the mortgage lender's state licenses is suspended.

It suspends 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: October 1, 2014

§ 5 — Application Requirements

Prerequisites to Licensure. The bill requires the commissioner to issue a mortgage servicer license if he finds that:

1. the applicant has identified a "qualified individual" 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 application date;
2. the applicant's control persons, 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 in a domestic, foreign, or military court at any time before the application date 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;

3. demonstrates that the financial responsibility, character, and general fitness of the applicant, the control persons of the applicant, 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, fidelity bond, and errors and omissions coverage requirement;
5. has not made a material misstatement in the application; and
6. other similar requirements.

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

The bill does not count pardons and expungements under Connecticut law as 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 that jurisdiction does not use the terms "felony," "pardon," or "expungement," then legally equivalent terms apply.

Application. An applicant for a mortgage servicer license or license renewal 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;
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 the system prescribes; and

3. furnish information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

The applicant must promptly notify the commissioner, in the system, of any change to the information submitted in connection with its most recent application, within 15 days of becoming aware of the changes.

The bill specifies that evidence of the qualified individual's and any branch manager's experience 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 the person's duties and responsibilities and employment term, including month and year, and, if the 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. Under current law, 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 reinstating 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.

The bill allows the commissioner to institute a revocation or suspension proceeding or issue an order suspending or revoking the license within one year after the expiration date, if the mortgage servicer's license expires due to the licensee's failure to renew.

Withdrawn or Abandoned Application. An applicant who wishes to withdraw an application for a license must submit a notice of that intent to the commissioner. The withdrawal becomes effective when the commissioner receives the notice. The bill allows the commissioner to deny a subsequent license application up to one year after the effective date of withdrawal.

The bill allows the commissioner to consider 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 considered abandoned. Application fees for abandoned applications cannot be refunded. However, the bill allows the applicant to submit a new application with another fee.

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: October 1, 2014

§ 6 — 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 doing 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 the change, with the system, at least 30 calendar days before it occurs and (2) the commissioner does not disapprove the 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 bond and errors and omissions coverage on file that reflects the new name or address of the main office or branch office.

Other Filing Requirements. The mortgage servicer licensee must file with the system or, if the information cannot be filed on the system, directly notify the commissioner, in writing, within five business days of having reason to know, if the licensee:

1. files for bankruptcy or consummates a corporate restructuring;
2. is criminally indicted, or receives notice that any of its officers, directors, members, partners, or shareholders owning 10% or more of its outstanding stock is indicted for, or convicted of, a felony;
3. receives notice of the institution against it of license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action by any governmental agency and the reasons for the 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 of its servicing rights will be rescinded or cancelled, and the reasons why;
7. receives notice that any of its officers, directors, members, partners, or shareholders owning 10% or more of its outstanding stock has filed for bankruptcy; or
8. receives notice of a consumer class action lawsuit against it that is related to the operation of the licensed business.

EFFECTIVE DATE: October 1, 2014

§ 7 — License 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 it is renewed. If the license was approved on or after November 1, 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: October 1, 2014

§ 8 — Bond Requirements

A mortgage servicer applicant or licensee and any person, other than a bank, exempt from mortgage servicer licensure must file with the commissioner, a surety bond, a fidelity bond, and errors and omissions coverage written by a surety authorized to do business in the state. The bill prohibits anyone from acting as a mortgage servicer in the state without maintaining the required bonds, and errors and omissions coverage.

Surety Bond. The surety bond must cover the main office and any branch office where a person acts as a mortgage servicer. Under the bill, the required bond amount is \$100,000 per office location and the bond must run concurrently with the license period for the main office. The aggregate liability under the bond must not exceed \$100,000. It must be (1) in a form approved by the attorney general and (2) conditioned on the mortgage servicer licensee or person exempt from mortgage servicer licensure 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 the licensee receives from a mortgagor or mortgagee in its capacity as a mortgage

servicer; and conducting the mortgage business in compliance with the law.

Any mortgagor or mortgagee may proceed on the bond against the principal or surety of the bond, or both, to recover damages. The commissioner may proceed on the bond against the principal or surety of the bond, or both, to collect (1) any civil penalty or restitution imposed on a licensee and (2) any unpaid costs of an 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 the principal's bankruptcy 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. If the action results in any recovery on the bond, the principal must immediately file a new bond.

Fidelity Bond and Errors and Omissions Coverage

The required fidelity bond and errors and omissions coverage must name the commissioner as an additional loss payee on drafts the surety issues to pay for covered losses directly or indirectly incurred by mortgagors of residential mortgage loans serviced by the mortgage servicer.

The fidelity bond must cover losses arising from dishonest and fraudulent acts, embezzlement, misplacement, forgery, and similar events committed by the mortgage service's employees. The errors and omissions coverage must cover losses arising from the mortgage servicer's negligence, errors, and omissions with respect to the payment of real estate taxes and special assessments, hazard and flood insurance, or the maintenance of mortgage and guaranty insurance.

The required fidelity bond and errors and omissions coverage amounts are based on the mortgage servicer's volume of servicing activity most recently reported to the commissioner, as follows:

1. \$300,000 if the amount of the residential mortgage loans serviced is \$100 million dollars or less or
2. if the loan amount exceeds \$100 million, the principal amount must be \$300,000 plus (a) 0.15% of the amount of residential mortgage loans serviced between \$100 million and \$500 million; (b) plus 0.125% of the amount of residential mortgage loans serviced from \$500 million to \$1 billion; and (c) plus 0.1% of the amount of residential mortgage loans serviced above \$1 billion.

The fidelity bond and errors and omissions coverage may include a deductible of no more than the greater of \$100,000 or 5% of the principal amount.

Cancellation of the Bond and Errors and Omissions Coverage.

The surety company has the right to cancel the surety bond, fidelity bond, and errors and omissions coverage 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 cancellation date. The commissioner must give the principal, notice of the pending cancellation and suspend its license on the cancellation date.

Automatic suspension or inactivation is halted if, prior to the effective date of the cancellation, (1) the principal submits a letter of reinstatement of, or new, bond or errors or omissions coverage 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.

Under the bill, a state-licensed mortgage lender acting as a mortgage servicer from a location licensed as a main office or branch office loses its exemption from the mortgage services licensing requirements if the required surety bond, fidelity bond, or errors and

omissions coverage is cancelled.

Additional Bonds Based on Financial Conditions. Under the bill, the commissioner may require one or more additional bonds meeting the standards described above, if he finds a mortgage servicer's or mortgage lender licensee's financial condition warrants it. The licensee must file any additional bonds within 10 days after receiving the commissioner's written notice of a requirement to do so. A mortgage servicer or mortgage lender licensee must file any bond rider or endorsement or addendum the commissioner requires.

EFFECTIVE DATE: October 1, 2014

§ 9 — *Records Retention*

A mortgage servicer licensee and person exempt from licensure must (1) maintain adequate records of each residential mortgage loan transaction at the office named in the mortgage servicer or mortgage lender license or (2) if requested by the commissioner, make the records available at the office or send them to the commissioner within five business days of the request. The records must be sent 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 on which the mortgage servicer makes or receives payments, 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 his or her 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 every mortgage servicer licensee and person exempt from licensure licensee to retain the records of each residential mortgage loan serviced for (1) at least two years following the final payment on each residential mortgage loan it services or the assignment of the loan, whichever occurs first, or (2) any longer period required by law.

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

EFFECTIVE DATE: October 1, 2014

§ 10 — 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 USC § 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, 2015

§§ 11 & 12 — Standards of Conduct

Violation of Federal Law. The bill requires a mortgage servicer to 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 against any such a violation.

Limitations on Mortgage Servicer Fees. A mortgage servicer must maintain and keep current a schedule of the fees it charges mortgagors for servicing related activities. The schedule must (1) identify each fee, (2) provide a plain English explanation of it, and (3) state the fee amount 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 on request.

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, 2015

§ 13 — 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 servicing the residential mortgage loan;
3. obtaining property by fraud or misrepresentation;
4. knowingly misapplying or recklessly applying residential mortgage loan payments to the outstanding balance of a residential mortgage loan;
5. knowingly misapplying or recklessly applying payments to escrow accounts;
6. 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;
7. failing to comply with a request for a payoff or reinstatement statement;
8. knowingly or recklessly providing inaccurate information to a credit bureau, causing harm to a mortgagor's creditworthiness;
9. 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;
10. collecting payments for private mortgage insurance beyond the date when private mortgage insurance is required;
11. failing to issue a release of mortgage;
12. 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 he or she has the required insurance coverage

- and by which the mortgage servicer will terminate the insurance coverage placed by it and refund or cancel any insurance premiums and related fees paid by or charged to the mortgagor;
13. placing hazard, homeowner's, or flood insurance on mortgaged property, or requiring a mortgagor to obtain or maintain such insurance, that exceeds the replacement cost of the improvements on the mortgaged property as established by the property insurer;
 14. failing to provide to the mortgagor a refund of unearned premiums paid by 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 so 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);
 15. requiring any amount of 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;
 16. 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);
 17. conducting any business as a mortgage servicer without holding a valid license, or while assisting or aiding and abetting any person to conduct business without a valid license;
 18. negligently making any false statement or knowingly and willfully omitting 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; and

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

EFFECTIVE DATE: January 1, 2015

§ 17 — Exemptions From Mortgage Servicer Requirements

The mortgage servicer requirements discussed above, do not apply to a person:

1. exempt from licensure as a mortgage lender or mortgage correspondent lender while servicing residential mortgage loans made under the exemption;
2. servicing five or fewer residential mortgage loans within any period of 12 consecutive months;
3. any agency of the federal government, state or municipal government, or quasi-governmental agency servicing residential mortgage loans as authorized under any state or federal law; and
4. exempt from licensure as a mortgage servicer under the bill (see § 4).

§§ 14, 16, & 19 — Investigation and Examination

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

It requires the commissioner to 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

allows him to 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 he deems relevant.

A licensee or anyone subject to this bill must make or compile reports or prepare other information as the commissioner directs.

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 risk 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 the 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 outside 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 as the audit, and incorporate the audit report in the commissioner's report of examination, report of investigation, or other writing.

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: October 1, 2014

§ 15 — Enforcement

The commissioner may suspend, revoke or refuse to renew any mortgage servicer license or take any other action (1) for any reason that would be sufficient grounds for him to deny an application for the license or (2) if he 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:

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 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 the 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: October 1, 2014

§§ 18-20 & 23-24 — *Conforming Changes*

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

EFFECTIVE DATE: October 1, 2014

§ 21 — MORTGAGE LENDER, MORTGAGE CORRESPONDENT LENDER, OR MORTGAGE BROKER LICENSURE EXCEPTIONS

The bill limits the banks and credit unions that are exempt from the mortgage lender, mortgage correspondent lender, or mortgage broker licensure requirements by limiting the current exemption to only certain of their subsidiaries.

Under current law, any operating subsidiary of a federal bank or federally chartered out-of-state bank, or any wholly owned subsidiary of a Connecticut bank or a Connecticut credit union is exempt from such licensing. Under the bill, the exemption applies to any wholly owned subsidiary of a federal bank or federally chartered out-of-state bank, any wholly owned subsidiary of a Connecticut bank or a Connecticut credit union or 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 where each owner of such operating or wholly owned subsidiary is wholly owned by the same bank.

EFFECTIVE DATE: October 1, 2014

§ 22 — DEBT NEGOTIATOR LICENSURE EXCEPTIONS

The bill limits the banks and credit unions that are exempt from the debt negotiator licensure requirements by excluding certain of their subsidiaries.

Under current law, operating subsidiaries of federal banks and federally chartered out-of-state banks are subject to the debt negotiator licensure requirements. The bill requires licensure only for (1) wholly owned subsidiaries of federal banks and federally chartered out-of-state banks and (2) operating subsidiaries where each owner of the operating subsidiary is wholly-owned by the same bank.

EFFECTIVE DATE: October 1, 2014

§ 25 — LOAN PRODUCTION OFFICES

By law, Connecticut banks, with the banking commissioner's approval, can establish loan production offices in and out of state. A "loan production office" is an office whose activities are limited to producing and soliciting loans.

Under the bill, a Connecticut bank that proposes to close a loan production office must notify the commissioner within 30 days before the proposed closing date. The notice must include (1) a detailed statement of the reasons for the purpose closing and (2) the statistical and other information supporting the reasons. The commissioner may require the Connecticut bank to submit any additional information.

The bill requires the Connecticut bank to provide notice of the proposed closing to its customers by posting a conspicuous notice, for at least the 30 days leading up to the proposed closing date, on the loan production office premises.

EFFECTIVE DATE: October 1, 2014

§ 26 — BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION (BIDCO)

By law, an entity must receive a state license to operate as a BIDCO to participate under the loan guarantee programs of the federal Small Business Administration. The bill prohibits such a license from being

transferred and assigned.

The bill also specifies that the \$400 license fee due from BIDCOs to the commissioner by June 20 each year, for the succeeding year, is a license renewal fee.

EFFECTIVE DATE: October 1, 2014

§ 27 — BANKERS' BANK

The bill allows banks and credit unions with principal offices in New Jersey or Pennsylvania to join a group of banks that owns a Connecticut-chartered bankers' bank and permits the bank to provide services to them. Current law allows banks and credit unions in Connecticut, other New England states, and New York to join and receive services. A "bankers' bank" is a wholesale bank that provides services only to the institutions that own it and their directors, officers, and employees. It does not engage in retail banking. Connecticut currently has one such bank, Bankers' Bank Northeast.

EFFECTIVE DATE: Upon passage

§§ 28-33 & 35 — MORTGAGE LICENSING SYSTEM AND REGISTRY

The bill extends the banking commissioner's authority to use the Nationwide Mortgage Licensing System and Registry, which he currently uses for mortgage industry licensing, for all financial services industry licensing and registration.

The bill authorizes the system to receive and maintain these licensing and registration records if the commissioner elects to use system-based licensing and registration for people engaged in the financial services industry. It provides the commissioner with additional authority to change requirements as reasonably necessary to enable expanded participation in the system.

The bill makes fees paid to the system nonrefundable, requires that filings be consistent with system procedures and requirements, requires applicants and licensees to timely and accurately submit any required

reports, and allows someone to challenge the factual accuracy of information on the system.

The bill makes several conforming changes to apply existing provisions about the system to the new uses authorized by the bill.

It also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except for the provisions extending the commissioner's authority to use the system, which are effective October 1, 2014.

§§ 28-30 — System

Current law defines the term "system" used in mortgage industry licensing as 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.

The bill allows the system's use in licensing and registration in the financial services industries beyond the mortgage industry. It also specifies that the system (1) may be referred to as NMLS, NMLSR, or any other name or acronym as may be assigned and (2) is owned and operated by the State Regulatory Registry LLC, or any successor or affiliated entity.

§§ 33 & 35 — Commissioner's Authority to Use the System in Licensure

Authority to Require System-Based Licensure. Under current law, the commissioner may require persons engaged in the mortgage industry to be licensed or registered through the system.

The bill authorizes the commissioner to require anyone engaged in a financial services industry subject to the commissioner's jurisdiction to be licensed or registered through the system. It prohibits a person from making false statements or omissions of material fact in

connection with information reported with the system.

System-Based Licensure. Under the bill, the commissioner must require all initial or renewal applications for a license or registration in Connecticut, on forms prescribed by him, to be made and processed through the system if he elects to require system-based licensure. If he does, the system must be authorized to receive and maintain records on the licenses or registrations to the same extent allowed or required to be maintained by the commissioner.

The commissioner may, by order, establish requirements for participation in the system, including:

1. background checks, including criminal history checks for owners or managers of business organizations;
2. payment of license application or renewal or registration fees through the system;
3. setting or resetting of license expiration, renewal, or transition dates, reporting dates, or forms; and
4. requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the system.

The bill specifies that background checks include:

1. fingerprint submission to the FBI or other state, national, or international database;
2. civil, criminal, or administrative records from any government jurisdiction;
3. credit history; and
4. any other activities the commissioner deems necessary.

The commissioner may use the information collected to determine the applicant's eligibility for licensing under applicable law and any

order he issues under this section. The commissioner may, by order, waive or modify, in whole or in part, any applicable requirement of the banking statutes and establish new requirements to participate in the system, as reasonably necessary. He may adopt licensing regulations and interim procedures for licensing and acceptance of applications.

Commissioner's Report to the System. If the commissioner elects to require system-based licensure for persons engaged in a financial services industry, he may report regularly to the system any (1) violation of an enforcement action under applicable law and (2) other relevant information.

The commissioner may establish a relationship or enter into a contract with the system or any other entity the system designates. He may also collect and maintain records and process transaction fees or other fees related to licensees or others required or permitted to be licensed or registered on the system.

Channeling Information Through the System. The bill allows the commissioner to use the system as a channeling agent for requesting information from, and distributing information to, the U.S. Department of Justice, any government agency, and any other source he directs.

Challenging Information Entered into the System. Under the bill, any person required or permitted to be licensed or registered on the system may challenge information the commissioner enters into it. The bill requires any such challenges to (1) be made in writing to the commissioner, (2) identify the specific information being challenged, and (3) include any evidence that supports the challenge. Challenges must be limited to the factual accuracy of information within the system.

The bill requires the commissioner to take prompt action to correct information that he determines is factually inaccurate. It does not permit challenges to the merits or factual basis of any administrative action taken by the commissioner under the banking statutes.

System Policies and Procedures. Anyone filing or submitting any information to the system must follow its procedures and requirements and pay any applicable fees or charges to the system.

Each person required to obtain registration or licensure through the system must timely submit accurate reports to it, in the form and with the information it requires.

Fees. Under the bill, any fee paid for an initial or renewal application for a license or registration, including fees paid in connection with an application that is denied or withdrawn before the issuance of the license or registration, is nonrefundable. Fees cannot be prorated if a license or registration is surrendered, revoked, or suspended before it expires.

Automatic Suspension. The bill allows the commissioner to automatically suspend the license or registration of a person if the system indicates that a required payment was not accepted. It requires the commissioner to (1) give the licensee or registrant notice of the suspension or pending proceedings for revocation or refusal to renew, and an opportunity for a hearing on the action and (2) require the licensee to take or refrain from taking action, as specified by the commissioner.

Abandoned License and Registration Application. Under the bill, the commissioner may deem an application for a license or registration on the system abandoned if the applicant fails to respond to any request for required information. He must notify the applicant, on the system, that if the information is not submitted within 60 days from the date of the request, the application will be deemed abandoned and the application filing fee will not be refunded.

Abandonment of an application does not preclude the applicant from submitting a new application.

License or Registration Issued in Error. The commissioner may issue a temporary order to cease business under a license or registration if he determines that it was issued in error. He must give

the licensee an opportunity for a hearing. The temporary order is effective when the licensee receives it and, unless set aside or modified by a court, remains in effect until the effective date of a permanent order or dismissal of the matters asserted in the notice.

§ 31 — Confidential or Privileged Information

Under current law, information or material disclosed to or on the system that is protected by state and federal privacy or confidentiality privilege must retain the protections. The bill extends the confidentiality provisions to the new uses of the system related to financial services industry licenses and registration and allows sharing with federal and other state financial industry regulators.

§ 32 — System-Based License Surrenders

Under current law, financial services licensees may surrender a license to the commissioner in person or by registered or certified mail. For mortgage industry licenses issued through the system, surrenders must be initiated by filing a request on the system. The bill extends current law on surrendering a license through the system to the financial services industry licensees using the system.

§ 34 — ATTORNEY EXEMPTION FROM MORTGAGE LOAN ORIGINATOR LICENSURE

The bill narrows the scope of the exemption for certain attorneys from mortgage loan originator licensure to those licensed in Connecticut. The exemption applies to attorneys who negotiate the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, mortgage correspondent lender, mortgage broker, other mortgage loan originator, or one of their agents.

EFFECTIVE DATE: October 1, 2014

§ 36 — LICENSEES' EDUCATION REQUIREMENTS

The bill increases licensing education and testing requirements for a mortgage lenders, mortgage correspondent lenders, and mortgage

brokers from 20 to 21 hours of approved instruction, by adding one hour in relevant Connecticut law. The bill also requires one hour of approved instruction in relevant Connecticut law but does not increase the eight hours total required for continuing education.

The prelicensing education requirement is effective October 1, 2014 and the continuing education requirement on October 1, 2015. Under existing law, unchanged by the bill, prelicensing and continuing education courses must be reviewed and approved by the system based on reasonable standards.

EFFECTIVE DATE: October 1, 2014

§§ 37 & 38 — FORECLOSURE MEDIATION PROGRAM

The bill extends the state's foreclosure mediation program for four years, until July 1, 2018.

The state's foreclosure mediation program determines whether parties can reach an agreement that will avoid foreclosure. The program uses the judicial branch's foreclosure mediators to conduct mediation sessions in a statutorily prescribed timeframe. Under existing law, the program will sunset on July 1, 2014.

EFFECTIVE DATE: Upon passage

§ 39 — DISHONORED PAYMENT OF COLLECTION AGENCY LICENSING FEES

Current law requires the banking commissioner to automatically suspend a consumer collection agency's initial or renewed license due to a dishonored payment of licensing fees, but has an outdated reference to the appropriate fees that agencies must pay. The bill appears to limit this provision to dishonored payments of the initial licensing fee.

EFFECTIVE DATE: Upon passage

§ 40 — PROTECTED AGREEMENTS AND ENTITY TRANSACTIONS

The law, beginning on January 1, 2014, established a mechanism for

specified business entities to change their entity type through mergers, conversions, and interest exchanges (“entity transactions”). Current law protects certain types of agreements that were in effect on or after October 1, 2011. The bill instead applies to agreements in effect on or after January 1, 2014, the date the entity transaction provisions took effect.

By law, a protected agreement is:

1. a record evidencing indebtedness and related agreements,
2. an agreement binding on one entity,
3. an entity’s organic rules, or
4. an agreement binding on an entity’s governors or interest holders.

By law, a provision in a protected agreement applicable to a merger can also apply to other entity transactions.

EFFECTIVE DATE: Upon passage

§§ 41-45 — TECHNICAL CHANGES

The bill makes technical changes and corrects an improper reference.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Bill

sSB 283, favorably reported by the Banks Committee, among other things, (1) expands the licensure and bond requirements for businesses that make residential mortgage loans or act as mortgage lenders, mortgage correspondent lenders, or mortgage brokers that engage the services of a mortgage loan originator to act on their behalf; (2) expands the licensure requirements for debt negotiators who are also mortgage loan originators; and (3) requires a mortgagee to provide a certificate of good standing to a mortgagor who has completed the

foreclosure mediation program, if specified conditions are met.

HB 5483 (File 99), favorably reported by the Housing Committee, extends the foreclosure mediation program by four years, until July 1, 2018. It also adds the Housing Committee to the required recipients of two reports the Judicial Branch's chief court administrator must submit concerning the foreclosure mediation program.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/18/2014)