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## OLR Bill Analysis

### sSB 283

#### ***AN ACT CONCERNING THE BANKING LAWS, THE UNIFORM COMMERCIAL CODE, THE ELECTRONIC FUND TRANSFER ACT AND MORTGAGORS IN GOOD STANDING.***

#### **SUMMARY:**

This bill makes a number of unrelated changes. Among other things, it:

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 mortgage loan originators to act on their behalf;
2. creates a bond requirement for certain bona fide nonprofit organizations that are exempt from mortgage broker licensure and choose to sponsor a mortgage loan originator;
3. limits the recovery of judgments against a debt negotiator's bond by prospective mortgagors of certain types of mortgages;
4. expands licensure requirements for debt negotiators who are also mortgage loan originators;
5. allows service of notice and process to begin a legal proceeding against certain individuals to be made by certified mail, return receipt requested;
6. modifies the process by which a debtor's funds held by a financial institution can be obtained to satisfy a judgment, including expanding the circumstances when a bank must leave the lesser of \$1,000 or the balance in a person's account;
7. excludes from the laws governing nonprime home loans, single

family mortgages insured or guaranteed by the Federal Department of Housing and Urban Development under federal law and regulations;

8. expands the types of banks that may offer savings promotion raffles; and
9. 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.

The bill also makes technical changes, including various references to federal regulations to reflect the transfer of authority from the Federal Reserve System to the Consumer Financial Protection Bureau. It also corrects improper references (§§ 2, 5-8, and 13).

EFFECTIVE DATE: Upon passage, except for (1) the provision on certificates of good standing, which is effective July 1, 2014; (2) provisions on service of process in certain cases, funds exempt from execution, and nonprime loans, which are effective October 1, 2014; and (3) a conforming change regarding funds exempt from execution, which is effective July 1, 2015.

## **§§ 1 & 11-12 — MORTGAGE LOAN ORIGINATORS**

### **§ 1 — *Branch Offices***

The bill expands the licensure and bond requirements for certain businesses that make residential mortgage loans or act as mortgage lenders, mortgage correspondent lenders, or mortgage brokers (i.e., licensees).

By law, a licensee may engage the services of a licensed “mortgage loan originator” but is not required to obtain a license for any location where a mortgage loan originator acts on its behalf. Existing law requires a licensee to do so for its main office and each branch office. The bill classifies a mortgage loan originator’s location as a branch office and, in so doing, requires a licensee to (1) obtain a license, (2) file an addendum to the required bond, and (3) have a branch manager for each location where a licensed mortgage loan originator acts on its

behalf. The branch manager at the mortgage loan originator's location must meet the minimum requirements for a branch manager under existing law, which include (1) at least three years' experience in the mortgage business within the five years preceding the license application and (2) prelicensing education.

Under law a "mortgage loan originator" is an individual who, for compensation, (1) takes a residential mortgage loan application or (2) offers or negotiates terms of a residential mortgage loan.

**§ 11&12 — Bond Requirement for a Bona fide Nonprofit Organization Sponsoring a Mortgage Loan Originator**

The bill creates a bond requirement for certain "bona fide nonprofit organizations" that (1) are exempt from mortgage broker licensing and (2) choose to sponsor a mortgage loan originator (defined above).

By law a "bona fide nonprofit organization" is an organization that files a form with the banking commissioner certifying it has tax-exempt status, promotes affordable housing, and serves public or charitable purposes.

By law, a bona fide nonprofit organization is exempt from licensing as a mortgage broker if it acts as a mortgage broker for residential loans made by a corporation or its affiliate to (1) benefit its employees or agents or (2) promote home ownership in urban areas. By law, a bona fide nonprofit organization may sponsor a mortgage loan originator by registering as an exempt registrant on the Nationwide Mortgage Licensing System and Registry (i.e., the system) which is used for licensing and registration mortgage lenders, mortgage correspondent lenders, mortgage brokers, mortgage loan originators, and loan processors or underwriters.

Under current law, a bona fide nonprofit organization that is an exempt registrant is not required to file a surety bond with the commissioner. The bill requires the organization to obtain a bond for an amount based on its aggregate residential mortgage loan amount during the 12-month period ending July 31 of the current year, as follows:

<b><i>Aggregate Residential Mortgage Loan Amount</i></b>	<b><i>Required Bond Amount</i></b>
Up to \$30 million	\$50,000
\$30 million up to \$50 million	\$100,000
\$50 million or more	\$150,000

The bill also makes technical changes and corrects an improper reference throughout.

### **§§ 3-4 & 9-10 — DEBT NEGOTIATORS**

#### **§§ 3-4 — *Judgment Recovery from Bond Proceeds***

The bill limits the recovery of judgments against a debt negotiator's bond by certain prospective mortgagors.

By law, debt negotiators must file a surety bond with the commissioner. Under current law, a mortgagor or prospective mortgagor may recover from the bond, a judgment that the debt negotiator or the sponsored mortgage loan originator failed to satisfy relating to the negotiation of, or offer to negotiate, a nonprime home loan.

Under current law, nonprime home loans include single family mortgages insured or guaranteed by the Federal Department of Housing and Urban Development under federal law and regulations (78 Federal Register 75237). This bill no longer classifies such a mortgage as a nonprime loan and by so doing, prevents a prospective mortgagor of such a loan from proceeding against the principal or surety of the bond when the negotiator fails to satisfy a judgment that arises from the negotiation of or offer to negotiate such a mortgage. A mortgagor of such a loan may proceed against the bond under similar provisions in existing law, but those existing provisions do not apply to prospective mortgagors.

#### **§§ 9-10 — *Licensure Requirement***

The bill expands the licensure requirements for certain debt negotiators.

By law, unless otherwise exempt, a debt negotiator must be licensed

as a mortgage loan originator if engaged in the negotiation of a residential mortgage loan on behalf of a mortgagor for compensation or gain. Under current law, any such debt negotiator must comply with all requirements imposed on a mortgage loan originator, such as licensure, bond, and records retention requirements. The bill allows the commissioner to suspend, revoke, or refuse to issue or renew the debt negotiator license of a debt negotiator who violates the mortgage loan originator requirements.

The bill also makes conforming changes and corrects an improper reference.

**§§ 14-16 — SERVICE OF PROCESS IN CERTAIN CASES INVOLVING THE BANKING COMMISSIONER**

The bill allows service of notice and process to begin a legal proceeding against certain individuals to be made by certified mail, return receipt requested. As under current law, this service can also be by (1) registered mail, return receipt requested or (2) express delivery carrier with a dated delivery receipt.

This applies when the law requires one of the following people to appoint the banking commissioner as his or her agent for service of process:

1. applicants for registration with the commissioner under the uniform securities act (such as broker-dealers, investment advisors, and investment advisor agents), investment advisors who are exempt from registration, and certain issuers of securities;
2. sellers proposing to sell or offer a business opportunity (the sale and lease of products, equipment, supplies, or services that enable a person to start his or her own business) in Connecticut; and
3. people who violate these laws, have not filed the required consent to service, and are not subject to personal jurisdiction in Connecticut.

**§§ 17-18 — FUNDS EXEMPT FROM EXECUTION IN DEBTOR'S ACCOUNT**

The bill modifies the process by which a debtor's funds held by a financial institution ("bank") can be obtained to satisfy a judgment. Specifically, the bill:

1. expands the circumstances when a bank must leave the lesser of \$1,000 or the balance in a person's account when paying funds under an execution,
2. limits when a serving officer (such as a state marshal) may serve the same execution on the same bank, and
3. makes other minor changes to the execution laws.

***Amount Left in Account and Readily Identifiable Deposits***

By law, a creditor may obtain a court-ordered judgment against someone who owes the creditor money (debtor). The creditor may have an execution issued by the court served on any bank where the debtor has an account. Certain funds are exempt from execution if the debtor claims the exemption.

Current law requires the bank to leave in the account the lesser of \$1,000 or the account balance if, in the 30 days before the execution was served on the bank, an electronic direct deposit was made to the account that is readily identifiable as one of the following: (1) federal veterans' benefits, (2) Social Security benefits, or (3) child support payments the state collects and electronically deposits into a parent's bank account. The bill expands application of this rule in two ways:

1. it applies this rule when an account receives electronic direct deposits that are readily identifiable as (a) exempt benefits paid by the federal Railroad Retirement Board or Office of Personnel Management (which includes federal civil service retirement benefits) or (b) unemployment benefits and
2. it lengthens the look-back period for all of these readily identifiable deposits from 30 to 60 days or a longer period if

required by federal law for a federal benefit.

The law requires the debtor to have access to funds left in the account. The bill specifies that this must be full and customary access to the funds.

### ***Repeat Service of Executions on Banks***

The bill prohibits a serving officer from subsequently serving the same execution (or a copy of it) on the same bank when an electronic direct deposit from one of the readily identifiable sources described above was made to the debtor's account during the look-back period described above (presumably the period before subsequent service). Otherwise, the bill allows subsequent service of the execution as long as the execution has not expired or become unenforceable.

### ***Notice***

When funds are removed from an account, the law requires the bank to mail a copy of the execution and exemption claim form to the debtor. The bill additionally requires mailing notice to the debtor as required by federal regulation for certain federal benefits. Federal regulations require a bank to send a readily understandable notice with certain information when a benefit agency deposits a benefit payment into the account. The notice must, among other things, identify the federal benefits involved and explain garnishment, the bank's obligations under federal law, and the state law's requirements to freeze funds (31 CFR 212.7).

### **§ 19 — NONPRIME LOANS**

The bill excludes from the laws governing nonprime home loans, single family mortgages insured or guaranteed by the federal Department of Housing and Urban Development under federal law and regulations (see 12 USC § 1701 et seq. and 78 Federal Register 75237, which adds new regulations on qualified mortgages). Under the federal regulations, these mortgages must meet certain requirements regarding maximum points, fees, and interest rates that relate to the borrower's ability to repay the loan.

The law governing nonprime home loans imposes various requirements on making these loans, and restricts allowable provisions in such loans. In practice, a nonprime home loan is one generally made to a relatively risky borrower and that thus has a higher interest rate and stricter repayment terms.

## **§ 20 — SAVINGS PROMOTION RAFFLES**

This bill expands the types of banks that may offer savings promotion raffles under specified conditions.

By law, a “savings promotion raffle” is a raffle in which an account holder who is at least age 18 deposits a minimum specified amount of money in a savings account or savings program for a chance to win designated prizes. Each entry in the raffle must have an equal chance of winning.

The bill allows all bank and trust companies, savings banks, or savings and loan associations chartered or organized under Connecticut law to offer savings promotion raffles. Current law limits these raffles to Connecticut credit unions and community banks the commissioner deems to be financially secure. (A community bank is a Connecticut bank with a minimum equity capital of at least \$3 million.)

The bill also expands the requirements for institutions seeking to offer savings promotion raffles. Existing law requires such institutions to (1) fully disclose the savings promotion raffle terms and conditions and (2) maintain records sufficient to facilitate a related audit. The bill also requires the institutions to (1) comply with applicable consumer protection laws, (2) not jeopardize their safety and soundness, and (3) submit written notice to the commissioner 30 days prior to conducting the raffle.

## **§ 21 — MEDIATION PROGRAM CERTIFICATE OF GOOD STANDING**

The bill requires mortgagees (i.e., the owner or servicer of a mortgage debt) to provide a “certificate of good standing” to a mortgagor (i.e., the homeowner) who has (1) requested such certificate, (2) successfully completed the state’s foreclosure mediation program,

and (3) remained current on the mortgage payment for three years after completing the program.

The bill defines a “certificate of good standing” as a letter stating that the mortgagor has made each mortgage payment in a timely fashion, as determined by the mortgagee.

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.

## **BACKGROUND**

### ***Related Bills***

sHB 5353, favorably reported by the Banks Committee, among other things, (1) 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; (2) narrows the scope of the exemption from mortgage loan originator licensure applicable to certain attorneys; and (3) extends the foreclosure mediation program by four years, until July 1, 2018.

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.

SB 57 (File 17), favorably reported by the Labor Committee, expands the types of deposits that are automatically exempt up to \$1,000 from bank executions against a judgment debtor’s account to include electronic direct deposits that are readily identifiable as wages.

## **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/18/2014)