

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 14-89—sHB 5353

Banks Committee

Appropriations Committee

AN ACT CONCERNING MORTGAGE SERVICERS, CONNECTICUT FINANCIAL INSTITUTIONS, CONSUMER CREDIT LICENSES, THE FORECLOSURE MEDIATION PROGRAM, MINOR REVISIONS TO THE BANKING STATUTES, THE MODERNIZATION OF CORPORATION LAW AND REVERSE MORTGAGE TRANSACTIONS

SUMMARY: This act makes numerous unrelated changes regarding financial services companies. Among other things, it:

1. renames mortgage servicing companies “mortgage servicers,” modifies related licensure requirements and standards of conduct, and gives the banking commissioner authority to conduct investigations and examinations and take enforcement actions;
2. modifies the exemptions from certain licensure and bonding requirements 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 owns the 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. (a) extends the banking commissioner’s authority to use the Nationwide Mortgage Licensing System and Registry, (b) authorizes the system to receive and maintain licensing and registration records, and (c) 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 two years, until June 30, 2016, and makes other program-related changes;
11. limits when the banking commissioner can automatically suspend a consumer collection agency’s license due to a dishonored check for payment of licensing fees;

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12. makes a minor change in the law allowing specified business entities to change their entity type;
13. creates a 17-member Commission on Connecticut's Leadership in Corporation and Business Law within the Legislative Branch; and
14. establishes a six-member task force to study the reverse mortgage industry.

The act also corrects improper references and makes technical and other conforming changes (§§ 41-45 & 47-49).

EFFECTIVE DATE: October 1, 2014, unless otherwise stated below. The sections that correct improper references and make certain technical and other conforming changes (§§ 41-45 and 47-49) are effective upon passage.

§§ 1-20, 23, & 24 — MORTGAGE SERVICERS

§ 1 — Definitions

Prior law defined a “mortgage servicing company” as any person who services a first mortgage loan. The act 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 act 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 prior law, a “mortgagor” was any person who was obligated to repay a first mortgage loan. The act expands this beyond the first loan, but limits it to residential mortgage loans.

The act defines “mortgagee” as the lender of a residential mortgage or the last person of record to whom the residential mortgage has been assigned. 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 Connecticut and slated as the future site for one or more residential homes.

Under the act, “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.

§ 4 — Licensure Requirement

The act 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 act exempts the following from the mortgage servicer licensing

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requirements:

1. federally insured banks, out-of-state banks, Connecticut credit unions, federal credit unions, or out-of-state credit unions;
2. wholly owned subsidiaries of such banks or credit unions;
3. operating subsidiaries where each owner of the operating subsidiary is wholly owned by the same such bank or credit union; and
4. persons licensed as mortgage lenders in Connecticut 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 license is suspended.)

The act removes provisions related to the banking commissioner's powers to take action against a mortgage servicing company for failing to provide certain services, including paying the mortgagor's (borrower's) taxes and insurance premiums from the designated account. The act provides new enforcement authority.

§ 5 — *Application Requirements*

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

1. 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" (see below) within the five years immediately preceding the application date;
2. applicant, 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 felony (a) during the seven-year period before the date of the application or (b) involving an act of fraud or dishonesty, a breach of trust, or money laundering;
3. applicant demonstrates that the financial responsibility, character, and general fitness of the applicant, the control persons of the applicant (e.g., director, general partner, or executive officer), 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 act's and laws' purposes;
4. applicant has met the act's surety bond, fidelity bond, and errors and omissions coverage requirement;
5. applicant has not made a material misstatement in the application; and
6. applicant has met other similar requirements determined by the commissioner.

The act 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

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for it.

The act 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.

Under the act, “experience in the mortgage servicing business” means paid experience in the (1) servicing of mortgage loans; (2) accounting, receipt, and processing of payments on behalf of mortgagees or creditors; or (3) supervision of such activities, or any other relevant experience as determined by the commissioner.

Application. An applicant for a mortgage servicer license or license renewal must:

1. file with the system an application form prescribed by the commissioner and a \$1,000 licensing fee;
2. furnish the system information on 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 government jurisdiction.

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

The act specifies that evidence of the qualified individual’s and any branch manager’s experience must include a statement specifying the (1) person’s employment duties and responsibilities; (2) term of employment, including month and year; and (3) name, address, and telephone number of a supervisor, employer or, if self-employed, a business reference. It must also include, if required by the commissioner:

1. copies of W-2 forms, 1099 tax forms or, if self-employed, 1120 corporate tax returns and
2. signed letters from the employer on the employer’s letterhead verifying the person’s duties and responsibilities and employment term.

If the person is unable to provide such letters, it must also include other proof satisfactory to the commissioner that the person meets the experience requirement.

The act allows the commissioner to (1) conduct a criminal history record 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 of such persons as part of the application.

License Renewal. Under the act, 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.

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Under the act, the commissioner may adopt procedures for reinstating expired licenses consistent with the standards the system establishes.

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 and (2) require the licensee to take or refrain from taking specified action pending proceedings for revocation or refusal to renew and an opportunity for a hearing.

The act 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 a license application must submit a notice of that intent to the commissioner. The withdrawal becomes effective when the commissioner receives the notice. The act allows the commissioner to deny a subsequent license application for up to one year after the effective date of a withdrawal.

The act 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, through 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 act allows the applicant to submit a new application with another fee.

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

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

§ 6 — Filing Requirements

The act 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 act prohibits the transfer or assignment of a mortgage servicer license. A licensee must file a request, through the system, to surrender the license for each office at which the licensee intends to stop doing business, within 15 days after it stops acting as a mortgage servicer. This requirement does not apply if the license was suspended. The surrender takes effect when the commissioner accepts the request.

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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 the (1) licensee files the change, through the system, at least 30 calendar days before it occurs and (2) 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 give 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 through 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 license denial, cease and desist, or suspension or revocation procedures or other formal or informal regulatory action by any government agency and the reasons for the action;
4. receives notice that the attorney general of Connecticut 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.

§ 7 — *License Terms and Fees*

Under the act, 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. But, 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. For an initial license or renewal, the licensee must pay a \$1,000 license fee to the system along with any required fees or charges. All fees are nonrefundable and cannot be prorated.

§ 8 — *Bond Requirements*

Under the act, 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 Connecticut. The act 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 act, 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 in a form approved by the attorney general and conditioned on the mortgage servicer licensee or person exempt from mortgage servicer licensure:

1. faithfully performing any and all written agreements or commitments with, or for the benefit of, mortgagors and mortgagees;
2. truly and faithfully accounting for all funds the licensee receives from a mortgagor or mortgagee in its capacity as a mortgage servicer; and
3. 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 any (1) civil penalty or restitution imposed on a licensee and (2) unpaid costs of an examination of a licensee.

Under the act, 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 act requires the principal to notify the commissioner when action on the bond commences. The commissioner may in turn 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 servicer'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

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million 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) 0.125% of the amount of residential mortgage loans serviced from \$500 million to \$1 billion, and (c) 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.

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 providing a written notice to the principal and the commissioner stating the effective date of the cancellation. The company must send notice by certified mail to the principal at least 30 days before the cancellation date. The commissioner must give the principal written notice of the pending cancellation and suspend its license on the cancellation date.

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

After a license is automatically suspended, the commissioner must (1) give the licensee notice of the 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 act, 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 servicer licensing requirements if the required surety bond, fidelity bond, or errors and omissions coverage is cancelled.

Additional Bonds Based on Financial Condition. Under the act, 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, endorsement, or addendum the commissioner requires.

§ 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 after 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. Upon request, the commissioner may grant the licensee additional time. The records must provide the following information:

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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 documenting 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 act requires every mortgage servicer licensee and person exempt from licensure 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 act 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 compliance with the mortgage servicer laws.

§ 10 — Assignment and Disclosure Requirements

The act 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 act requires a mortgage servicer to comply with all applicable federal laws and regulations relating to mortgage loan servicing. In addition to any other remedies provided by law, the act allows the commissioner to take enforcement action against violators.

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

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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 the schedule available to the mortgagor or the mortgagor's authorized representative on request.

The act prohibits any late fee or delinquency charge when the (1) only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment and (2) 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) from being collected from the escrow account or from escrow surplus without the approval of the mortgagor, or (3) from being deducted from any regular payment.

EFFECTIVE DATE: January 1, 2015

§ 13 — Prohibited Practices

The act 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 residential mortgage loans;
3. obtaining property by fraud or misrepresentation;
4. knowingly misapplying or recklessly applying (a) residential mortgage loan payments to the outstanding balance of a residential mortgage loan or (b) payments to escrow accounts;
5. placing hazard, homeowner's, or flood insurance on a mortgaged property when the mortgage servicer knows or has reason to know that the mortgagor has an effective policy for such insurance;
6. failing to comply with a request for a payoff or reinstatement statement;
7. knowingly or recklessly providing inaccurate information to a credit bureau that harms a mortgagor's creditworthiness;
8. 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;
9. collecting payments for private mortgage insurance beyond the date when such insurance is required;
10. failing to issue a release of mortgage;
11. 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 (a) mortgagor may demonstrate that he or she has the required insurance coverage and (b) mortgage servicer will terminate the insurance coverage it placed and refund or cancel any insurance premiums and related fees paid by or charged to the mortgagor;
12. placing hazard, homeowner's, or flood insurance on mortgaged property, or requiring a mortgagor to obtain or maintain such insurance, that

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exceeds the replacement cost established by the property insurer for improvements on the mortgaged property;

13. 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);
14. 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;
15. refusing to communicate with a mortgagor's authorized representative who provides a written authorization signed by the mortgagor (the licensee is allowed to adopt procedures to verify that the representative is authorized to act on the mortgagor's behalf);
16. conducting any business as a mortgage servicer without holding a valid license, or assisting or aiding and abetting any person to conduct business without a valid license;
17. negligently making any false statement or knowingly and willfully omitting a material fact in connection with any information or reports filed with a government agency or the system, or in connection with any investigation conducted by the commissioner or another government agency; and
18. 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 federal, state, municipal, or quasi-government agency servicing residential mortgage loans as authorized under any state or federal law, or 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 12 consecutive months, or
3. exempt from licensure as a mortgage servicer under the act (see § 4).

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

The act allows the commissioner to conduct investigations and examinations for purposes of initial licensing; license renewal, suspension, conditioning, 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.

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The act 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 their location, possession, control, or custody. It allows him to direct, subpoena, or order the (1) attendance of any person whose testimony may be required and (2) production of any books, accounts, records, files, or documents he deems relevant. It also allows him to examine such person under oath.

A licensee or anyone subject to this act 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 act 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 them as needed to conduct ordinary business, unless the commissioner has reason to believe that they are at risk of being altered or destroyed.

Under the act, 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 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 the commissioner's 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 the act cannot knowingly withhold, abstract, remove, mutilate, destroy, or conceal any books, records, computer records, or other information.

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

§ 15 — Enforcement

The commissioner may suspend, revoke, or refuse to renew any mortgage

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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, imposing civil penalties up to \$100,000 per violation, and issuing orders of restitution.

The act allows the commissioner to adopt implementing regulations.

§§ 2-3, 18-20, & 23-24 — Conforming Changes to Reflect the Retitled Term

The act makes numerous conforming changes to reflect the retitled term (mortgage servicer) and its revised definition (see § 1).

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

The act expands the categories of banks and credit unions that are exempt from the mortgage lender, mortgage correspondent lender, or mortgage broker licensure requirements by extending the current exemption to certain of their wholly owned and operating subsidiaries. The act also limits the current exemption available to certain wholly owned and operating subsidiaries.

Under prior law, any wholly owned subsidiary of a Connecticut bank or a Connecticut credit union was exempt from licensure. The act limits this exemption to the wholly owned subsidiaries of such banks or credit unions that are federally insured. The act adds licensure exemption for any wholly owned subsidiary of any federally insured bank, out-of-state bank, federal credit union, and out-of-state credit union.

Also under prior law, any operating subsidiary of a federal bank or federally chartered out-of-state bank was exempt from licensure. The act limits this exemption to the operating subsidiaries whose owners are wholly owned by the same such federal bank or federally chartered out-of-state bank. The act adds licensure exemption for any operating subsidiary of any federally insured bank or credit union, if its owner is wholly owned by the same such bank or credit union.

§ 22 — DEBT NEGOTIATOR LICENSURE EXCEPTIONS

The act expands the categories of banks and credit unions that are exempt

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from the debt negotiator licensure requirements by extending the prior exemption to certain of their wholly owned and operating subsidiaries.

Under prior law, operating subsidiaries of federal banks and federally chartered out-of-state banks were subject to the debt negotiator licensure requirements. The act exempts from licensure any operating subsidiary of any bank or credit union if its owner is wholly owned by the same such bank or credit union. The act also adds an exemption for any wholly owned subsidiary of any federally insured bank, out-of-state bank, Connecticut credit union, federal credit union, and out-of-state credit union.

§ 25 — LOAN PRODUCTION OFFICES

By law, Connecticut banks can establish loan production offices in- and out-of-state with the banking commissioner's approval. These offices are limited to producing and soliciting loans.

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

The act requires the bank to notify its customers of the proposed closing by posting a conspicuous notice, for at least 30 days before the proposed closing date, on the loan production office premises.

§ 26 — BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION

The act prohibits transferring or assigning a license to operate as a business and industrial development corporation. By law, most entities must obtain one of these licenses from the banking commissioner to operate as such a corporation and participate under the loan guarantee programs of the federal Small Business Administration.

§ 27 — BANKERS' BANK

The act 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. Existing law allows banks and credit unions in Connecticut, other New England states, and New York to join. A "bankers' bank" is a wholesale bank that provides services to the other banks 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 act 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.

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The act 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 act (1) makes fees paid to the system nonrefundable, (2) requires that filings be consistent with system procedures and requirements, (3) requires applicants and licensees to timely and accurately submit any required reports, and (4) allows someone to challenge the factual accuracy of information on the system.

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

Prior law defined 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 act 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. The law allows the commissioner to require persons engaged in the mortgage industry to be licensed or registered through the system.

The act authorizes the commissioner to also 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 to the system.

System-Based Licensure. Under the act, if the commissioner elects to require system-based licensure, (1) he must require all initial or renewal applications for a license or registration in Connecticut to be made and processed through the system on forms he prescribes and (2) the system must be authorized to receive and maintain records on the licenses or registrations to the same extent the commissioner is allowed or required to maintain them.

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

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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 act specifies that background checks include:

1. fingerprint submission to the Federal Bureau of Investigation or other state, national, or international databases;
2. civil, criminal, or administrative records from any government jurisdiction;
3. credit history; and
4. any other activities the system 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 licensure system. 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 the financial services industry, he may report regularly to the system any (1) violation of, and 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 act 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 act, any person required or permitted to be licensed or registered through the system may challenge information the commissioner enters into it. The act 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 are limited to the factual accuracy of information within the system.

The act 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 submitting any information to the

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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 act, 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 act allows the commissioner to automatically suspend the license or registration of a person if the system indicates that a required payment was not accepted. The commissioner must (1) give the licensee or registrant (a) notice of the suspension or pending proceedings for revocation or refusal to renew and (b) 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 act, 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, through 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

By law, records disclosed to or on the system that are protected by a state or federal privacy or confidentiality privilege retain the protection. The act extends the confidentiality provisions to (1) any material and information provided to the system and (2) the new uses of the system related to financial services industry licenses and registration. It also allows sharing of the records with federal and other state financial industry regulators.

§ 32 — System-Based License Surrenders

By 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 through the system. The act extends the law on surrendering a license through the

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system to the financial services industry licensees using the system. It also specifies that a surrender through the system is not effective until the commissioner accepts it.

§ 34 — ATTORNEY EXEMPTION FROM MORTGAGE LOAN ORIGINATOR LICENSURE

The act 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.

§ 36 — LICENSEES' EDUCATION REQUIREMENTS

The act increases licensing education and testing requirements for mortgage lenders, mortgage correspondent lenders, and mortgage brokers from 20 to 21 hours of approved instruction, by adding one hour of approved instruction in relevant Connecticut law. For continuing education, the act also requires one hour of approved instruction in relevant Connecticut law, but does not increase the eight hours total required.

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

§§ 37, 38, & 46 — FORECLOSURE MEDIATION PROGRAM

Program Extension and Funding

The act extends the state's foreclosure mediation program for two years, until June 30, 2016. The act also requires that, from July 1, 2014 until June 30, 2016, the program must be funded within available appropriations. Under the act, the size of the program during that time must be determined by the availability of funding and the number and need of program participants.

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 prior law, the program would sunset on July 1, 2014.

Premediation Review Protocol

By law, the state foreclosure mediation program includes a premediation process during which the mortgagee provides the mortgagor, in certain circumstances, a mediation information form that instructs the mortgagor to gather and submit to the mediator financial documentation commonly used in foreclosure mediation.

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The act requires the chief court administrator to develop a premediation review protocol under which the mediator must request the resubmission of any documents that are incomplete, contain errors, or are likely to be unacceptable to the mortgagee. The act specifies that the premediation review must not be construed to be the practice of law on behalf of any party to mediation or the provision of legal advice by the mediator.

EFFECTIVE DATE: Upon passage, with the provision on the program funding effective July 1, 2014.

§ 39 — DISHONORED PAYMENT OF COLLECTION AGENCY LICENSING FEES

Prior law required the banking commissioner to automatically suspend a consumer collection agency's initial or renewed license when a check paying the license fees was dishonored. But, it had an outdated reference to the appropriate fees that such agencies must pay. The act appears to limit this provision to dishonored payments of the initial licensing or investigation 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"). Prior law protected certain types of agreements that were in effect on or after October 1, 2011. The act instead provides such protections 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 an entity,
3. an entity's organic rules, or
4. an agreement binding an entity's governors or interest holders.

EFFECTIVE DATE: Upon passage

§ 50 — COMMISSION ON CONNECTICUT'S LEADERSHIP IN CORPORATION AND BUSINESS LAW

The act creates a 17-member Commission on Connecticut's Leadership in Corporation and Business Law within the Legislative Branch.

The commission must develop and recommend policies to:

1. establish Connecticut as a leading and highly desirable location to organize a business entity (a corporation, association, partnership, limited liability company, or similar organization) and adjudicate corporate and business law matters and
2. attract and encourage business entities to organize under Connecticut law and have their headquarters and significant business operations here.

It must submit a 10-year action plan to the legislature by October 1, 2015 to

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achieve these purposes and establish Connecticut's leadership in corporation business organization law.

Charge

In developing its plan and to achieve the act's purposes, the commission must develop and recommend policies to:

1. enhance and improve Connecticut's corporation statutes;
2. establish a court docket with exclusive jurisdiction over matters involving business entity organization, shareholders, securities, and business combinations or transactions involving the sale or transfer of ownership interests; and
3. assist the secretary of the state in developing best-in-the-nation business services and support, including a state-of-the-art business entity organization and filing system with accelerated access to business services 24 hours a day.

The commission must also examine the impact of statutes and the common law in Connecticut, Delaware, New York, and other states on organizing business entities and retaining them in Connecticut. It must recommend legislation and administrative and policy changes to the governor and legislature. To do so, the commission must examine the impact of:

1. Connecticut's business corporation laws;
2. state business taxes, including franchise and corporation business taxes;
3. Judicial Branch operations on business entity organization, including court rules, the complex litigation docket, and the branch's composition;
4. the Secretary of the State's Office and the state's procedures for business entity organization and filing, including electronic and accelerated capabilities;
5. Delaware's corporate law, Chancery Court, and statutory and administrative provisions on (a) Delaware's economy and economic development and (b) adjudication of corporate and business disputes in Connecticut courts; and
6. New York's corporation law, Supreme Court's commercial division, and other statutory and administrative provisions on (a) New York's economy and economic development and (b) adjudication of corporate and business disputes in Connecticut courts.

Members

The commission consists of:

1. the Connecticut Bar Association business law section chairperson;
2. the economic and community development commissioner or her designee;
3. the chief court administrator or his designee;
4. the chairpersons of the Banks, Commerce, and Judiciary committees, or their designees chosen from among the appropriate committee's membership;
5. one member appointed by each of the six legislative leaders; and
6. two members appointed by the governor.

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Members must choose the commission's chairperson from among the members and the commission must meet as necessary.

§ 51 — REVERSE MORTGAGE TASK FORCE

The act establishes a task force to study the reverse mortgage industry. The study must examine:

1. statewide best practices of the industry, including consumer protection practices;
2. existing federal regulations and any proposed new or revised federal regulations governing consumer protection requirements in the context of reverse mortgage transactions; and
3. any federal or state court decisions that impact the reverse mortgage industry and reverse mortgage transactions in the state.

Task Force Members and Appointments

The six-member task force consists of one member each appointed by the:

1. Senate president pro tempore, who must be a representative from a nonprofit, nonpartisan organization that provides information, support, security, protection, and empowerment to older people;
2. Senate majority leader, who must be a Department of Consumer Protection representative;
3. Senate minority leader, who must be a Senate member;
4. House speaker, who must be a House member;
5. House majority leader, who must have expertise in the reverse mortgage industry; and
6. House minority leader, who must be a Commission on Aging representative.

All appointments must be made by July 3, 2014 and the appointing authorities must fill any vacancies.

The House speaker and Senate president pro tempore must select the task force chairpersons from among the members. The chairpersons must schedule and hold the first meeting by August 3, 2014. The Banks Committee's administrative staff must serve as the task force's administrative staff.

Reporting Requirement and Termination

The task force must report its findings and recommendations to the Banks and Aging Committees by January 1, 2015. It terminates when it submits the report or on January 1, 2015, whichever is later.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Act

Among other things, PA 14-7:

1. expands the licensure and bond requirements for businesses that make

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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.

OLR Tracking: MK/CR:KD:JKL:am