
OLR Bill Analysis

sHB 5490

AN ACT CONCERNING CONSUMER CREDIT LICENSES.

SUMMARY

This bill makes numerous changes to the banking statutes that generally expand the banking commissioner's authority and standardize various requirements across several license types.

Principally, the bill:

1. extends many existing authorities over certain mortgage-related licensees (i.e., mortgage lenders, correspondent lenders, processors or underwriters, and loan originators) to small loan lenders, mortgage servicers, student loan servicers, lead generators, and six other nonmortgage licenses (i.e., check cashers, consumer collection agencies, debt adjustors, debt negotiators, money transmitters, and sales finance companies); and
2. codifies two of the banking commissioner's orders requiring various nonmortgage licensees to use the Nationwide Mortgage Licensing System and Registry (NMLS or NMLSR; "the system") for license applications, renewals, and other license related activities (the law already requires this for mortgage-related licenses).

The bill also establishes new requirements or modifies existing requirements across all or several of such mortgage and nonmortgage license types. For example, it (1) removes a requirement that licensees physically display their license, (2) makes a licensee's qualifying individual, branch manager, or control person, as applicable, responsible for the licensee's actions, (3) expands when the commissioner may deny licenses or suspend, revoke, or refuse to

renew licenses, and (4) requires licensees to complete reports of condition.

The bill prohibits individuals outside the United States from conducting certain activities subject to licensure in various categories. (It is unclear if this provision is enforceable.)

The bill also:

1. makes several changes to specific license types (see below),
2. establishes a 36% maximum annual percentage rate (APR) for small loans under \$5,000 (§ 96),
3. requires the commissioner to report to the Banking Committee, by January 1, 2019, on the student loan ombudsman's status (§ 95) and on recommendations to require sales finance companies to collect and maintain certain customer demographic information (§ 97),
4. broadens the definition of credit union service organization and requires a credit union proposing to close such an organization to notify the banking commissioner at least 30 days in advance (§§ 98 & 99), and
5. changes the factors an approving authority must consider and the determinations the authority must make in order to approve a bank application (§ 100).

The bill also makes numerous minor, conforming, and technical changes.

EFFECTIVE DATE: October 1, 2018, except the provisions (1) requiring the banking commissioner to report on sales finance companies are effective upon passage and (2) allowing mortgage loan originators, processors, and underwriters that otherwise qualify for license renewal to compensate for any continuing education deficiencies according to regulations are effective January 1, 2019.

EXPANDED AUTHORITIES

Under current law, the banking commissioner's authority over licensees differs to some extent based on the license type. The bill generally makes the commissioner's investigative and related authority consistent across the license types he regulates. The bill specifies that the commissioner's authority extends to individuals acting or claiming to act with or without any licensing, registration, or other state authorizing requirement.

Authority to Investigate (§ 3)

By law, the commissioner has certain investigatory powers over all mortgage related licensees, small loan lenders, lead generators, and student loan servicers. The bill extends this authority to check cashers, consumer collection agencies, debt adjustors and negotiators, money transmitters, and sales finance companies ("other nonmortgage" licenses).

Accessing Records. Under the bill, the commissioner may access, receive, and use records, information, and evidence for (1) the purposes of an investigation related to issuing, renewing, suspending, conditioning, revoking, or terminating a license or (2) any inquiry or investigation of someone engaged in a business licensed under the banking laws. The records and evidence may include:

1. criminal, civil, and administrative history information,
2. personal history and experience information, including independent credit reports; and
3. any other records, information, or evidence the commissioner deems relevant, regardless of its location, possession, control, or custody.

The bill requires an individual under investigation to make or compile reports or prepare other information required by the commissioner, including accounting compilations, information lists, transaction records, and any other information he deems necessary.

Controlling Records. The bill allows the commissioner to control access to any records of the individual being investigated. He may take possession of the records or place a person in exclusive charge of the records at the location they are usually kept. The bill refers to this as a “period of control.” During this period, individuals are prohibited from removing or attempting to remove the records without the commissioner’s consent, unless directed to by a court order. Under the bill, the records’ owner has access to the records during the control period unless the commissioner believes they have been, or are at risk of being, altered or destroyed in an effort to conceal a violation of law.

The bill specifies that the commissioner’s authority to examine records includes accounts, files, and computer systems. By law, this authority already extends to, among other things, books, papers, software, and correspondence.

Third Party Investigations, Reports, and Audits. Instead of conducting his own investigation, the bill allows the commissioner to rely upon an investigation or report made by another government official or a state or federal supervisory agency or its affiliated organization. The bill deems any report or investigation the commissioner accepts and relies upon as his official examination or report. Current law contains similar provisions concerning money transmitters.

The commissioner may also accept audit reports from an independent certified public accountant. The bill allows such reports to be considered an official commissioner’s report, or incorporated into a commissioner’s official report or any other examination or investigation report or writing.

Additional Powers. The bill allows the commissioner, in order to conduct a license related investigation, to:

1. retain attorneys, accountants, examiners, auditors, investigators, and other professionals to conduct or assist in investigations;
2. share resources, standardized or uniform methods or

procedures, records, information, or evidence obtained in an investigation with other government officials or regulatory associations to improve efficiency and reduce regulatory burden; and

3. use, hire, contract, or employ public or private analytical systems, methods, or software to examine or investigate the person.

Prohibition on Destroying Records. The bill prohibits any individual being investigated from knowingly withholding, abstracting, removing, mutilating, destroying, or hiding records or information.

Authority to Suspend and Revoke Licenses (§ 4)

The bill extends the commissioner's authority to suspend and revoke expired licenses and deny withdrawn license applications to student loan servicers and other nonmortgage license types. Current law already grants him this authority for mortgage-related licenses and some or all of this authority for certain nonmortgage licenses (including debt adjusters and negotiators, small loan lenders, and sales finance companies).

Under the bill, the commissioner may revoke or suspend, or initiate a revocation or suspension proceeding for an expired license within one year after the licensee failed to renew it.

The bill also deems a withdrawn application effective when the commissioner accepts the withdrawal on the system. The bill allows the commissioner to deny an application until the withdrawal is effective.

Authority to Remove Individuals (§ 5)

Authority to Remove Individuals. By law, the commissioner may order a mortgage loan originator, processor, underwriter, lender, correspondent lender, broker, lead generator, and small loan lender licensee to remove an individual from office and from employment or retention as an independent contractor, if he finds after an

investigation that the individual has (1) violated any licensure requirements or other applicable laws or (2) engaged in any conduct that would be sufficient grounds for the commissioner to deny a license. The bill extends this authority to sales finance companies (§ 30), check cashers (§ 48), money transmitters (§ 59), debt negotiators and adjusters (§§ 64 & 68), mortgage servicers (§ 77), consumer collection agencies (§ 81), and student loan servicers (§ 88).

The commissioner must notify the individual by registered or certified mail, return receipt requested, or by express delivery with a dated receipt. If the individual is licensed by the commissioner, the commissioner may notify the individual by personal delivery in accordance with law (i.e., delivery directly to the intended recipient or his or her designated representative, including by electronic mail). The notice is deemed received on the receipt date or seven days after sending.

The notice must include:

1. if a hearing has been scheduled, its time, place, and nature;
2. if a hearing has not been scheduled, a statement indicating the individual may request one in writing within 14 days;
3. the legal authority and jurisdiction under which the hearing is being held;
4. a reference to the statutory or regulatory provisions violated;
and
5. a short and plain statement of the matters asserted.

The commissioner must hold a hearing if the individual requests it within the specified timeframe, unless the individual fails to appear.

After the hearing, if the commissioner finds that the individual has violated applicable laws or would otherwise be denied a license, he may order the individual removed from office and employment in any business under the department's jurisdiction. If the individual fails to

appear, the commission may also order him or her removed. Orders must be issued in accordance with the state Uniform Administrative Procedure Act.

Before a hearing, the commissioner may suspend any individual from office or require him or her to take or refrain from taking specific actions if he finds that immediate action is necessary to protect borrowers. Such a suspension or prohibition is effective upon receipt and, unless stayed by a court, remains in effect until the commissioner enters a permanent order or the case is dismissed.

Authority to Hold Qualifying Individuals, Branch Managers, and Control Persons Responsible for the Licensee's Actions

The bill generally makes a licensee's qualifying individual, branch manager, or control person, as applicable, responsible for the licensee's actions. (By law, a control person is an individual that directly or indirectly exercises control over the licensee. Certain people are presumed to be control persons, including general partners, executive officers, and anyone controlling 10% or more of an organization's voting rights.)

The bill establishes certain requirements for these individuals. As is already the cases for some licenses, the bill also allows the commissioner to deny a licensee's application if his or her control person, qualified individual, or branch manager has been convicted of certain crimes or otherwise made material misstatements on the application.

The bill generally extends or applies these provisions to mortgage lenders, correspondent lenders, and brokers (§§ 10 & 11), sales finance companies (§ 25), small loan lenders (§ 34), check cashers (§ 43), money transmitters (§ 51), debt adjusters and negotiators (§§ 63 & 67), mortgage servicers (§ 72), consumer collections agencies (§ 79), and student loan servicers (§ 85).

Authority to Require Unique Identifiers on Advertisements and to Require Licensees to Retain Advertisement Records

By law, mortgage loan originators, loan processors, underwriters,

and small loan lenders must clearly show their unique identifier on all advertisements, including business cards and websites. Additionally, lead generators must keep adequate records of their advertisements (CGS § 36a-493). (A unique identifier is the licensee's NMLS number.)
The bill:

1. requires all license types, including mortgage lenders, correspondent lenders, brokers, and lead generators (§ 19), sales finance companies (§ 29), check cashers (§ 47), money transmitters (§ 60), debt adjusters and negotiators (§§ 65 & 67), mortgage servicers (§ 72), consumer collection agencies (§ 79), and student loan servicers (§ 86), to show their unique identifier on all advertisements, including having it clearly stated in audio advertisements; and
2. keep records of all advertisements for two years.

The bill also prohibits a licensee from including in advertisements (1) false, deceptive, or misleading statements and (2) a statement that they are endorsed by the state.

Authority to Proceed Against Bonds

By law, the commissioner may proceed against a mortgage servicer licensee's bond to recover restitution. The bill allows the commissioner to also proceed against such a licensee's bond for unpaid assessments (§ 74).

Beginning April 1, 2019, the bill allows the commissioner to proceed against certain other licensees' bonds to recover restitution imposed for violating state banking laws and any unpaid assessments. The bill allows him to do so against mortgage lenders, correspondent lenders, brokers, and loan originators (§ 13); debt adjusters and negotiators (§§ 66 & 69); and, for consumer collection agencies, restitution but not unpaid assessments (§ 80).

Authority to Require Reports of Condition

By law, mortgage lenders, correspondent lenders, brokers, lead generators, loan originators, and loan processors or underwriters, to

the extent required by the system, must submit timely and accurate reports of condition in a form and manner the system requires and pay any applicable fees and charges. Failure to do so is a violation of state banking law.

The bill also requires timely and accurate reports of condition, under similar or the same circumstances as above, of sales finance companies (§ 29); check cashers (§ 46); money transmitters (§ 57); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 72); consumer collection agencies (§ 79); and student loan servicers (§ 86).

For money transmitters (§ 57) and debt adjusters (§ 66), the bill also eliminates redundant reporting requirements. It does so by requiring certain financial reports only to the extent the information is not included in the bill's reports of condition. For money transmitters, the bill also changes the date for certain existing reporting requirements, from April 30 to not later than 90 days after the licensee's fiscal year end.

For student loan servicers (§ 85), the bill allows the commissioner to waive certain financial reporting requirements if the data is also captured in reports of condition submitted to the department.

ORDER OF THE COMMISSIONER

This bill codifies two orders of the banking commissioner dated June 17, 2015 and May 12, 2016, requiring certain applicants and licensees regulated by the Banking Department to use the system to apply and renew licensees, pay license fees, update license information, and conduct other license related activity. The orders also require that such licenses be renewed annually, instead of biannually, and make corresponding reductions in license fees.

The 2015 order applied to seven license types: money transmitters, consumer collection agencies, check cashing services, debt adjusters, debt negotiators, sales finance companies, and small loan companies. The 2016 order applied to student loan services (who were first required to be licensed by PA 15-162, effective in July 2016). Existing

law already required mortgage-related licensees (mortgage lenders, brokers, correspondent lenders, loan originators, processors, underwriters, and servicers) to use the system.

The bill requires such non-mortgage licensees to use the system for all license related activities to the same extent required of mortgage related licensees. This includes:

1. requiring applicants to provide on the system information about the applicant, his or her control person, a qualified individual, and any branch manager;
2. allowing the commissioner to conduct state or national criminal background checks on the applicant, control person, qualified individual, or branch manager and requiring such individuals' fingerprints; and
3. allowing the commissioner to investigate the financial condition of the applicant and any other person on the application, including obtaining a credit report.

Additional Commissioner Authority Over Licensees on the System

License Applications, Renewals, and Fees. The bill codifies a requirement that all licenses have an annual term expiring December 31, except initial license applications made after November 1 will be good until December 31 of the following year. Renewal applications must be filed between November 1 and December 31. The bill makes generally corresponding reductions to license application and renewal fees in accordance with the shift from biannual to annual licenses.

The provisions apply to sales finance companies (§ 26), check cashers (§ 44), money transmitters (§ 52), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§ 85). By law, small loan lenders must already meet this requirement.

Paying Fees and Automatic License Suspensions. By law, the

commissioner may (1) require that all fees be paid through the system and (2) automatically suspend a license or registration on the system if a licensee is deficient due to a returned payment. In such a circumstance, the commissioner must notify the licensee of the suspension, pending revocation or refusal to renew proceedings; offer the opportunity for a hearing; and require the licensee to take or refrain from taking action that, in the commissioner's opinion, is necessary to effectuate the law's provisions (CGS § 36a-24b).

The bill makes conforming changes to standardize this authority's applicability as to sales finance companies (§ 26), check cashers (§ 44), money transmitters (§ 54), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§ 85). (This requirement is already codified for small loan lenders and mortgage servicers.)

Nonrefundable Fees. All fees paid through the system, including for withdrawn or denied applications, are nonrefundable. The bill makes conforming changes to apply these provisions, as applicable, across all license types using the system, including sales finance companies (§ 26), small loan lenders (§ 35), check cashers (§ 44), money transmitters (§ 52), debt adjusters and negotiators (§§ 63 & 67), consumer collection agencies (§ 79), and student loan servicers (§§ 85 & 88).

Reinstating Expired Licenses. By law, the commissioner can adopt regulations for the reinstatement of expired licenses that use the system. The bill allows him to adopt procedures for such reinstatement for certain other licenses the bill moves onto the system, including for sales finance companies (§ 28), small loan lenders (§ 36), check cashers (§ 43), money transmitters (§ 54), debt adjusters (§ 63), consumer collection agencies (§ 79), and student loan servicers (§ 85).

Temporary Cease and Desist Orders. By law, the commissioner may issue a temporary cease and desist order to a business licensed through the system if he determines it is operating under an erroneously issued license or registration. The commissioner must give

the licensee an opportunity for a hearing. The temporary order is effective when the licensee receives it and, unless stayed by a court, remains in effect until a permanent order replaces it or the matter is dismissed (CGS § 36a-24b(j)).

The bill either establishes the commissioner's authority to issue such orders, or makes conforming changes to existing authority, for sales finance companies (§ 30), small loan lenders (§ 40), check cashers (§ 48), money transmitters (§ 59), debt adjusters and negotiators (§§ 64 & 68), mortgage servicers (§ 77), consumer collection agencies (§ 81), and student loan servicers (§ 88).

For certain licensees, including mortgage lenders, correspondent lenders, and brokers and small loan lenders, existing law allows the commissioner to take certain enforcement actions that include cease and desist orders if any person takes an action they knew or should have known would contribute to a violation of the banking laws. The bill expands these provisions to sales finance companies (§ 30), check cashers (§ 48), money transmitters (§ 59), debt adjusters and negotiators (§§ 64 & 68), mortgage servicers (§ 77), consumer collection agencies (§ 81), and student loan servicers (§ 88).

NEW LICENSURE REQUIREMENTS

License Required for Each Branch Office for Certain Licensees

By law, certain licensees on the system (e.g., mortgage lenders, brokers, and servicers) require a license for a main office and an additional license for each branch office that conducts licensable activity. The bill also requires this of sales finance companies (§ 24) and student loan servicers (§ 85).

Minimum Standards for License Renewal

The bill adds, to the minimum standards for a license renewal, that the applicant has paid any outstanding examination or other fees due to the commissioner. For various licenses, current law specifies that the licenses of individuals who fail to meet the minimum requirements expire. The bill clarifies that this applies to additional licensure categories as well.

The bill establishes or extends these provisions, as applicable, to lead generators, mortgage lenders and correspondent lenders, mortgage brokers, loan originators, loan processors and underwriters, and lead generators (§ 11); sales finance companies (§ 28), small loan lenders (§ 36), check cashers (§ 43), money transmitters (§ 54), debt adjusters and negotiators (§ 63 & 67), mortgage servicers (§ 72), consumer collection agencies (§ 79), and student loan servicers (§ 85).

Changes to Bond Notification Requirements

By law, a surety company can cancel a bond at any time by notifying the bond principal. The company must also notify the commissioner at least 30 days before the cancellation. For bonds issued through the system, the bill allows the company to electronically notify the commissioner and bond principal through the system rather than in writing, at least 30 days before the cancellation. The provisions apply to mortgage lenders, correspondent lenders, brokers, and loan originators (§ 13); money transmitters (§ 55); debt adjusters and negotiators (§§ 66 & 69); mortgage servicers (§ 74); and consumer collection agencies (§ 80).

Advance Change Notice and Using Unapproved Names or Addresses

As under current law, the bill prohibits a license from being transferred or assigned. The bill additionally requires licensees to file an advance change notice on the system at least 60 days before a change in control person. Such a change requires the commissioner's approval.

Current law:

1. prohibits certain licensees from using a name other than its legal name or a fictitious name approved by the commissioner and specified on his or her license;
2. allows the commissioner to disapprove use of a licensee's legal name; and
3. allows licensees to change their name or address by filing the

change on the system at least 30 days before the change, as long as the commissioner does not disapprove the change or require further information.

The bill either establishes these requirements or makes conforming changes that result in these requirements for mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 27); check cashers (§ 45); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79); and student loan servicers (§ 86). Similar requirements already applied under law for small loan lenders (§ 37).

Under current law and the bill, for several professions including mortgage related licenses, additional requirements apply if the licensee seeks to change its name or address, including providing a bond rider, endorsement, or addendum, as applicable.

Automatic Suspensions. The bill allows the commissioner to automatically suspend a license for, among other things, violating these provisions. After suspending the license, the commissioner must notify the licensee of the suspension, pending revocation or refusal to renew proceedings; offer the opportunity for a hearing; and require the licensee to take or refrain from taking action that, in the commissioner's opinion, is necessary to effectuate the law's provisions. The automatic suspension provisions apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 27); small loan lenders (§ 37); check cashers (§ 45); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79) and student loan servicers (§ 86).

Under the bill, the commissioner may also automatically suspend certain licenses for other criteria, including failing to appoint the appropriate qualified individual or branch manager within 30 days after a vacancy in the position. This provision applies to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12);

small loan lenders (§ 37); and mortgage servicers (§ 73).

Filing Updated Information

The bill requires applicants, licensees, control persons, qualified individuals, and branch managers to update the system with any changes to their information within 15 days after the person had reason to know of the change. If the information cannot be filed on the system, they must notify the commissioner of the change in writing. These provisions apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 29); small loan lenders (§ 38); check cashers (§ 43); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79); and student loan servicers (§ 85).

Updated Notification Requirements

By law, certain licensees must file or notify the commissioner in writing of specified actions, including if the licensee files for bankruptcy or is the subject of a criminal indictment. The bill adds to the list of licenses for which this applies. It also requires licensees to (1) notify the commissioner if any such actions are taken by or against a control person, branch manager, or qualified individual and (2) notify the commissioner within 15 days of having reason to know of these actions. These provisions apply to mortgage lenders, correspondent lenders, brokers, and lead generators (§ 12); sales finance companies (§ 29); small loan lenders (§ 38); check cashers (§ 43); money transmitters (§ 51); debt adjusters and negotiators (§§ 65 & 67); mortgage servicers (§ 73); consumer collection agencies (§ 79); and student loan servicers (§ 86). (As under current law, money transmitters must report such information within one business day.)

CHANGES TO CERTAIN LICENSURE REQUIREMENTS

Small Loan Lenders (§ 9)

The bill requires small loan lenders making residential mortgage loans to be licensed as mortgage lenders or mortgage correspondent lenders. Under current law, small loan lenders making residential

mortgages are exempt from additional licensure as mortgage lenders.

Bona Fide Nonprofit Mortgage Brokers (§§ 9 & 14)

By law, bona fide nonprofit organizations acting as mortgage brokers are exempt from broker licensing under certain circumstances. The bill sunsets the bona fide nonprofit status of such an organization if it fails to annually submit certain information required by the December 31 statutory deadline. The bill also extends to December 31 of the following year the deadline for nonprofits first obtaining bona fide nonprofit status after November 1. The bill authorizes the commissioner to (1) periodically examine the books and activities of a bona fide nonprofit and (2) revoke the bona fide nonprofit status of an organization failing to meet statutory criteria.

The bill also requires certain bona fide nonprofits exempt from licensure to maintain adequate records of residential mortgage loan transactions and make them available to the commissioner upon request. The bill makes conforming changes incorporating these nonprofits into the record retention provisions for other mortgage servicer licensees. This applies to such nonprofit organizations that make residential mortgage loans that promote home ownership for the economically disadvantaged.

Mortgage Lenders, Correspondent Lenders, and Brokers, Loan Originators, Processors or Underwriters, and Mortgage Servicers

Local Oversight (§§ 10 & 72). By law, mortgage lenders, correspondent lenders, brokers, and servicers must have (1) at the main office, a qualified individual and (2) at each branch office, a branch manager. The bill requires the qualified individual and branch manager to demonstrate to the commissioner that they (1) live within 100 miles of the main or branch office, respectively, or (2) are otherwise capable of providing full-time, in-person supervision.

The commissioner may waive this requirement, as well as certain other supervisory and experience requirements for qualified individuals or branch managers. He may waive such requirements for a (1) qualified individual if he or she demonstrates to the

commissioner that no activity subject to licensure will be conducted at the main office and (2) branch manager, where a person licensed as a mortgage lender at a branch office acts only in his or her capacity as a mortgage servicer and meets certain other requirements. (The waiver requirements are similar for such individuals associated with mortgage servicers.)

The bill requires mortgage originators to meet similar criteria. Under the bill, these licensees must be associated with and operate out of a specific licensed office, supervised by a qualified individual or branch manager. The licensee must live within 100 miles of the office unless the licensee demonstrates to the commissioner that he or she is supervised by a qualified individual or branch manager.

Changes to Bond Reporting Requirements (§ 13). By law, mortgage lenders, correspondent lenders, loan originators, brokers, and certain persons exempt from licensure must be covered by a surety bond. Current law requires the principal on such a bond to annually confirm with the commissioner that it maintains the required amount. The bill instead requires these persons to file quarterly reports on the system reflecting their residential mortgage loan volume, to confirm that it maintains a bond in the required amount.

Errors and Omissions Coverage Expiration (§ 74). For mortgage servicers, the bill requires the commissioner to suspend a license when a fidelity bond or errors and omissions coverage expires.

Continuing Education Requirements (§ 92). The bill allows mortgage loan originators, processors, and underwriters that otherwise meet the minimum standards for license renewal to compensate for any continuing education requirement deficiencies according to regulations adopted by the commissioner.

Student Loan Servicers and Mortgage Lead Generators (§ 1)

The bill makes a conforming change expressly extending the application of Connecticut banking laws to student loan servicers and mortgage lead generators. These licensees were previously established

by PA 15-162 and PA 17-38, respectively.

PROHIBITION ON CONDUCTING ACTIVITY OUTSIDE THE UNITED STATES

The bill prohibits persons from conducting any activity subject to licensure in an office outside the United States. (It is not clear how such a prohibition would be enforced.)

These provisions apply to mortgage lenders, correspondent lenders, brokers, loan originators, loan processors, and underwriters (§ 8); sales finance companies (§ 24); check cashers (§ 43); money transmitters (§ 50); debt adjusters and negotiators (§§ 63 & 67); mortgage servicers (§ 71); consumer collection agencies (§ 79); and student loan servicers (§ 85).

By law, all small loan lender offices must be located in the United States (CGS § 36a-562).

OTHER CHANGES

Sales Finance Companies

Expanded Violations (§ 30). By law, the commissioner can suspend, revoke, or refuse to renew a sales company license if the licensee, among other things, knowingly violated or failed to exercise due care in preventing a violation of statutory requirements.

Under current law, he may also take such action against if:

1. for licensees who are entities, an officer, director, trustee, member, or partner was guilty of an act or omission that would be cause for revoking or suspending the license; or
2. a licensee's agent or employee was guilty of such an offense and the licensee knew about or approved the offense and benefited from it.

The bill replaces this provision with one allowing the commissioner to suspend, revoke, or refuse to renew a license if the licensee's control person, qualified individual, branch manager, trustee, employee, or

agent, among other things, (1) knowingly violated statutory requirements or (2) failed to exercise due care in preventing such a violation.

Additional Compliance Fines (§ 91). By law, willfully violating the sales finance company statutes is punishable by a fine of up to \$500, six months imprisonment, or both. The bill subjects to the penalty any sales finance companies who fail to acquire and maintain certain demographic and financial information on loan applicants.

Check Cashers

Name and Location Fees (§§ 43 & 44). The bill removes certain statutory name and location fees. (Presumably, these fees are now paid on the system).

Annual Reports (§ 46). Under current law, check cashers must submit a quarterly report to the commissioner that includes the type of checks cashed and how many were above \$2,500. The bill (1) delays the reporting requirement until 2019 (2) and requires licensees to instead report the number and type of checks cashed over \$6,000. It also requires licensees to file a written statement if no reportable activity occurred.

Money Transmitters

Fees (§§ 51 & § 52). The bill removes certain statutory name and location fees. (Presumably, these fees are now paid on the system). It also combines certain investigation and license fees.

Debt Adjusters and Negotiators

Bond Requirements for Certain Exempt Debt Negotiators (§ 69). Current law requires all debt negotiators sponsoring and bonding at least one exempt mortgage loan originator to file a bond with specified amounts based on mortgage loan volume. The bill limits this requirement to a debt negotiator exempt from licensure as a mortgage lender, correspondent lender, or broker.

License Surrender (§ 67). The bill requires debt negotiators to surrender their license for each location that stops conducting business

within 15 days. Existing law already requires this for various other licenses.

Consumer Collection Agencies

License Surrender (§ 79). The bill requires consumer collection agencies to request a license surrender on the system at least 30 days before any location stops conducting business.

Certified Public Accountant Required (§ 79). Current law requires a license application to be accompanied by a financial statement prepared by a certified public accountant or other public accountant. The bill requires a certified public accountant to prepare the statement.

Exempt Consumer Collection Agencies (§§ 80 & 83). The bill exempts a consumer collection agency that engages solely in debt buying from certain bonding and depository requirements and related provisions (e.g., restrictions on commingling collected funds with other funds used in the agency's business).

Student Loan Servicers

Examination Costs (§ 6). The bill requires student loan servicers to pay for the cost of any examination by the commissioner, as current law requires of other licensees.

Certified Public Accountant Required (§ 85). Current law requires a license application to be accompanied by a financial statement prepared by a certified public accountant or other public accountant. The bill requires a certified public accountant to prepare the statement.

Compliance with PA 16-65 (§ 87). The bill requires student loan servicers to comply with the service standards set by the commissioner under PA 16-65. That act required the commissioner to adopt such standards and post them on the department's website by July 1, 2017.

Good Character Requirement for Control Persons and Qualified Individuals (§ 85). Under current law, in order to issue a license, the

commissioner must find the applicant and certain partners, shareholders, and other interested individuals are properly qualified and of good character. Under the bill, the commissioner must find the applicant's control persons, qualified individuals, branch managers, and trustees are properly qualified and of good character, including assessing their financial responsibility and any criminal history.

Money Transmitters

Good Character Requirement for Control Persons and Qualified Individuals (§ 53). Under current law, in order to issue a license, the commissioner must find the applicant and certain partners, shareholders, and other interested individuals are properly qualified and of good character. Under the bill, the commissioner must find the applicant's control persons and qualified individuals are properly qualified and of good character, including demonstrating financial responsibility.

§ 18 — PREPAID FINANCE CHARGE CAP ON MORTGAGE LOANS MADE BY CERTAIN BANKS AND CREDIT UNIONS

Under current law, mortgage lenders and correspondent lenders and certain persons exempt from such licensure, including certain banks and credit unions, are prohibited from imposing prepaid finance charges on a first mortgage loan of more than 5% of the cost of the loan or \$2,000.

The bill subjects wholly-owned subsidiaries, including operating subsidiaries, of such exempt banks and credit unions to the cap.

§ 95 — STUDENT LOAN OMBUDSMAN

The bill requires the commissioner, by January 1, 2019, to report to the Banking Committee on the status of the student loan ombudsman.

§ 96 — SMALL LOAN PERCENTAGE RATE CAP

The bill establishes a 36% maximum annual percentage rate (APR) for small loans under \$5,000. Currently, the APR cap for such loans is tied to the maximum rate permitted under the federal Military Lending Act (MLA), which is 36%. Under the bill, if the maximum

APR permitted under the MLA is amended to a rate below 36%, that rate would prevail.

§ 97 — REPORT ON SALES FINANCE COMPANIES

Under the bill, the banking commissioner must, by January 1, 2019, report to the Banking Committee on recommended methods of requiring sales finance companies to acquire and maintain certain information on applicants' and co-applicants' ethnicity, race, and sex in any (1) retail installment contracts acquired by purchase, discount, pledge, loan advance, or other methods and (2) application for a retail installment contract covering the sale of a motor vehicle in Connecticut that has been reviewed by, or relates to, a retail install contract acquired by the company.

§§ 98 & 99 — CREDIT UNION SERVICE ORGANIZATIONS

Under current law, a credit union service organization is such an organization that is incorporated under the state's laws and established by at least one Connecticut credit union. The bill expands the definition to include such an organization that is wholly owned by a federal or out-of-state credit union that converted to a Connecticut credit union. It also requires any Connecticut credit union that proposes to close a credit union service organization in the state to notify the commissioner at least 30 days before the proposed closing. The notice must detail the reasons for closing the organization.

§ 100 — BANK APPLICATION APPROVAL PROCESS

The bill changes how applications to start Connecticut banks are approved. Under current law, the approving authority (i.e., generally the commissioner or a combination of the commissioner, treasurer, and comptroller) must, after considering certain factors, approve the application if it determines the:

1. bank will serve the public interest,
2. conditions in the proposed locality offer the bank a reasonable promise of success, and
3. proposed directors have the capacity and fitness required for

their responsibilities.

The bill maintains the public interest requirement but changes the other two. Under the bill, the (1) bank must show a reasonable promise of success, regardless of the proposed locality's conditions, and (2) proposed directors and officers must possess the necessary capacity, character, and experience.

The bill also changes the factors the approving authority must consider when making this determination. Under current law, the authority must consider the (1) population of the area the proposed bank will serve, (2) adequacy of existing banking facilities in the area, (3) convenience and necessity of the proposed bank, and (4) character and experience of the proposed bank's directors and officers. Under the bill, the authority must instead consider similar factors in determining whether the public interest will be served by the proposed bank. To determine public interest, the authority must consider the (1) population that will be served by the bank, (2) competitive effect of the proposed bank on the availability and quality of services in the market area, (3) likely impact of the bank on other financial institutions in the market area, and (4) the market area's convenience and needs.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/20/2018)