



House of Representatives

General Assembly

File No. 247

January Session, 2019

Substitute House Bill No. 6995

House of Representatives, April 1, 2019

The Committee on Banking reported through REP. SANTIAGO, E. of the 130th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING SHARED APPRECIATION AGREEMENTS
AND CERTAIN START-UP COMPANIES ENGAGED IN THE ACTIVITY
OF MONEY TRANSMISSION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-485 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2019*):

3 As used in this section and sections 36a-486 to 36a-498e, inclusive,
4 36a-498h, 36a-534a and 36a-534b, unless the context otherwise requires:

5 (1) "Advance fee" means any consideration paid or given, directly or
6 indirectly, by a consumer to a person for a residential mortgage loan
7 prior to the closing of such residential mortgage loan, including, but
8 not limited to, loan fees, points, broker's fees or commissions,
9 transaction fees or similar prepaid finance charges;

10 (2) "Advertise", "advertisement" or "advertising" means the use of
11 any announcement, statement, assertion or representation that is

12 placed before the public in a newspaper, magazine or other
13 publication, or in the form of a notice, circular, pamphlet, letter or
14 poster or over any radio or television station, by means of the Internet,
15 or by other electronic means of distributing information, by personal
16 contact, or in any other way;

17 (3) "Branch office" means a location other than the main office at
18 which a licensee or any person on behalf of a licensee acts as a
19 mortgage lender, mortgage correspondent lender, mortgage broker or
20 mortgage loan originator;

21 (4) "Control person" means an individual that directly or indirectly
22 exercises control over another person. Any person that (A) is a
23 director, general partner or executive officer; (B) in the case of a
24 corporation, directly or indirectly has the right to vote ten per cent or
25 more of a class of any voting security or has the power to sell or direct
26 the sale of ten per cent or more of any class of voting securities; (C) in
27 the case of a limited liability company, is a managing member; or (D)
28 in the case of a partnership, has the right to receive upon dissolution,
29 or has contributed, ten per cent or more of the capital, is presumed to
30 be a control person. For purposes of this subdivision, "control" means
31 the power, directly or indirectly, to direct the management or policies
32 of a company, whether through ownership of securities, by contract or
33 otherwise;

34 (5) "Depository institution" has the same meaning as provided in
35 Section 3 of the Federal Deposit Insurance Act, 12 USC 1813, and
36 includes any Connecticut credit union, federal credit union or out-of-
37 state credit union;

38 (6) "Dwelling" means a "dwelling", as defined in Section 103 of the
39 Consumer Credit Protection Act, 15 USC 1602, that is located in this
40 state;

41 (7) "Employee" means an individual (A) whose manner and means
42 of work performance are subject to the right of control of, or are
43 controlled by, a person, and (B) whose compensation is reported or

44 required to be reported on a W-2 form issued by the controlling
45 person. For purposes of the definition of "registered mortgage loan
46 originator", "employee" has the foregoing meaning or such other
47 meaning as the federal banking agencies may issue in connection with
48 such agencies' implementation of such agencies' responsibilities under
49 the S.A.F.E. Mortgage Licensing Act of 2008, 12 USC 5101 et seq.;

50 (8) "Federal banking agency" means the Board of Governors of the
51 Federal Reserve System, the Comptroller of the Currency, the Director
52 of the Office of Thrift Supervision, the National Credit Union
53 Administration and the Federal Deposit Insurance Corporation;

54 (9) "First mortgage loan" means a residential mortgage loan that is
55 secured by a first mortgage;

56 (10) "Immediate family member" means a spouse, child, sibling,
57 parent, grandparent or grandchild and includes stepparents,
58 stepchildren, stepsiblings and adoptive relationships;

59 (11) "Independent contractor" means an individual retained on a
60 basis where the individual is not an employee of any person in
61 connection with the services such individual provides and whose
62 compensation is reported or required to be reported on an Internal
63 Revenue Service Form 1099 issued by the retaining person;

64 (12) "Individual" means a natural person;

65 (13) "Lead" means any information identifying a potential consumer
66 of a residential mortgage loan;

67 (14) "Lead generator" means a person who, for or with the
68 expectation of compensation or gain: (A) Sells, assigns or otherwise
69 transfers one or more leads for a residential mortgage loan; (B)
70 generates or augments one or more leads for another person; or (C)
71 directs a consumer to another person for a residential mortgage loan
72 by performing marketing services, including, but not limited to, online
73 marketing, direct response advertising or telemarketing;

74 (15) "Loan processor or underwriter" means an individual who
75 performs clerical or support duties. The term "clerical or support
76 duties" includes, subsequent to the receipt of an application, (A) the
77 receipt, collection, distribution and analysis of information common
78 for the processing or underwriting of a residential mortgage loan, and
79 (B) communication with a consumer to obtain the information
80 necessary for the processing or underwriting of a loan to the extent
81 that such communication does not include offering or negotiating loan
82 rates or terms or counseling consumers about residential mortgage
83 loan rates or terms;

84 (16) "Main office" means the main address designated on the
85 system;

86 (17) "Mortgage broker" (A) means a person who (i) for
87 compensation or gain or with the expectation of compensation or gain
88 (I) takes a residential mortgage loan application, or (II) offers or
89 negotiates terms of a residential mortgage loan, and (ii) is not the
90 prospective source of the funds for the residential mortgage loan, and
91 (B) does not include (i) an individual who is licensed as a mortgage
92 loan originator acting as a mortgage loan originator on behalf of such
93 mortgage loan originator's sponsoring mortgage lender, mortgage
94 correspondent lender, mortgage broker or exempt registrant, or (ii) an
95 individual exempt from mortgage loan originator licensure under
96 subdivision (2) of subsection (b) of section 36a-486 when acting within
97 the scope of such exemption;

98 (18) "Mortgage correspondent lender" means a person engaged in
99 the business of making residential mortgage loans in such person's
100 own name where the loans are not held by such person for more than
101 ninety days and are funded by another person through a warehouse
102 agreement, table funding agreement or similar agreement;

103 (19) "Mortgage lender" means a person engaged in the business of
104 making residential mortgage loans in such person's own name
105 utilizing such person's own funds or by funding loans through a
106 warehouse agreement, table funding agreement or similar agreement;

107 (20) "Mortgage loan originator" means an individual who for
108 compensation or gain or with the expectation of compensation or gain,
109 either for such individual or for the person employing or retaining
110 such individual, (A) takes a residential mortgage loan application, or
111 (B) offers or negotiates terms of a residential mortgage loan. "Mortgage
112 loan originator" does not include (i) an individual engaged solely as a
113 loan processor or underwriter; (ii) a person who only performs real
114 estate brokerage activities and is licensed in accordance with chapter
115 392, unless the person is compensated by a mortgage lender, mortgage
116 correspondent lender, mortgage broker or other mortgage loan
117 originator or by any agent of such mortgage lender, mortgage
118 correspondent lender, mortgage broker or other mortgage loan
119 originator; (iii) a person solely involved in extensions of credit relating
120 to timeshare plans, as that term is defined in Paragraph 53D of 11 USC
121 101; or (iv) any individual who solely renegotiates terms for existing
122 mortgage loans on behalf of a mortgagee and who does not otherwise
123 act as a mortgage loan originator, unless the United States Department
124 of Housing and Urban Development, the Bureau of Consumer
125 Financial Protection or a court of competent jurisdiction determines
126 that the S.A.F.E. Mortgage Licensing Act of 2008, 12 USC Section 5101
127 et seq., requires such individual to be licensed as a mortgage loan
128 originator under state laws implementing said S.A.F.E. Mortgage
129 Licensing Act;

130 (21) "Office" means a branch office or a main office;

131 (22) "Person" means a natural person, corporation, company, limited
132 liability company, partnership or association;

133 (23) "Principal amount of the loan" means the gross amount the
134 borrower is obligated to repay including any prepaid finance charge
135 that is financed, and any other charge that is financed;

136 (24) "Real estate brokerage activity" means any activity that involves
137 offering or providing real estate brokerage services to the public,
138 including (A) acting as a real estate agent or real estate broker for a
139 buyer, seller, lessor or lessee of real property; (B) bringing together

140 parties interested in the sale, purchase, lease, rental or exchange of real
141 property; (C) negotiating, on behalf of any party, any portion of a
142 contract relating to the sale, purchase, lease, rental or exchange of real
143 property, other than in connection with providing financing with
144 respect to any such transaction; (D) engaging in any activity for which
145 a person engaged in the activity is required to be registered or licensed
146 as a real estate agent or real estate broker under any applicable law;
147 and (E) offering to engage in any activity, or act in any capacity,
148 described in this subdivision;

149 (25) "Registered mortgage loan originator" means any individual
150 who (A) meets the definition of mortgage loan originator and is an
151 employee of a depository institution, a subsidiary that is owned and
152 controlled by a depository institution and regulated by a federal
153 banking agency, or an institution regulated by the Farm Credit
154 Administration; and (B) is registered with and maintains a unique
155 identifier through the system;

156 (26) "Residential mortgage loan" means any loan, including a shared
157 appreciation agreement, primarily for personal, family or household
158 use that is secured by a mortgage, deed of trust or other equivalent
159 consensual security interest on a dwelling or residential real estate
160 upon which is constructed or intended to be constructed a dwelling;

161 (27) "Residential real estate" means any real property located in this
162 state, upon which is constructed or intended to be constructed a
163 dwelling;

164 (28) "Secondary mortgage loan" means a residential mortgage loan
165 that is secured, in whole or in part, by a mortgage, provided such
166 property is subject to one or more prior mortgages;

167 (29) "Shared appreciation agreement" means a nonrecourse
168 obligation in which an advance sum of monetary value is extended to
169 a consumer, as a lump sum or otherwise, in exchange for an equity
170 interest in a dwelling, residential real estate or a future obligation to
171 repay a sum upon the occurrence of an event including, but not limited

172 to, the transfer of ownership, repayment maturity date, death of the
173 consumer or as outlined and explicitly agreed to within said
174 agreement.

175 [(29)] (30) "Simulated check" means a document that imitates or
176 resembles a check but is not a negotiable instrument;

177 [(30)] (31) "Sponsored" means employed or retained as an
178 independent contractor;

179 [(31)] (32) "Table funding agreement" means an agreement wherein
180 a person agrees to fund mortgage loans to be made in another person's
181 name and to purchase such loans after they are made;

182 [(32)] (33) "Trigger lead" means a consumer report obtained
183 pursuant to subparagraph (B) of subdivision (1) of subsection (c) of
184 Section 604 of the Fair Credit Reporting Act, 15 USC 1681b, as
185 amended from time to time, where the issuance of the report is
186 triggered by an inquiry made with a consumer reporting agency in
187 response to an application for credit;

188 [(33)] (34) "Unique identifier" means a number or other identifier
189 assigned by protocols established by the system; and

190 [(34)] (35) "Warehouse agreement" means an agreement to provide
191 credit to a person to enable the person to have funds to make
192 residential mortgage loans and hold such loans pending sale to other
193 persons.

194 Sec. 2. Subsection (a) of section 36a-598 of the general statutes is
195 repealed and the following is substituted in lieu thereof (*Effective*
196 *October 1, 2019*):

197 (a) Each application for an initial or renewal license required under
198 sections 36a-595 to 36a-612, inclusive, shall be made and processed on
199 the system pursuant to section 36a-24b, in the form prescribed by the
200 commissioner. Each such form shall contain content as set forth by
201 instruction or procedure of the commissioner and may be changed or

202 updated as necessary by the commissioner in order to carry out the
203 purposes of sections 36a-595 to 36a-612, inclusive. The applicant shall,
204 at a minimum, furnish to the system information concerning the
205 identity of the applicant, any control person of the applicant, the
206 qualified individual and any branch manager responsible for the
207 actions of the licensee, including, but not limited to, information
208 related to such person's personal history and experience and any
209 administrative, civil or criminal findings by any governmental
210 jurisdiction. As part of an application, the commissioner may, (1) in
211 accordance with section 29-17a, conduct a state or national criminal
212 history records check of the applicant, any control person of the
213 applicant, the qualified individual and any branch manager, and, (2) in
214 accordance with section 36a-24b, (A) require the submission of
215 fingerprints of any such person to the Federal Bureau of Investigation
216 or other state, national or international criminal databases, and (B)
217 investigate the financial condition of any such person and require
218 authorization from any such person for the system and the
219 commissioner to obtain an independent credit report from a consumer
220 reporting agency, as described in Section 603(p) of the Fair Credit
221 Reporting Act, 15 USC 1681a, as amended from time to time. An
222 application for an initial license shall also include:

223 (i) A copy of the applicant's audited financial statements for the
224 most recent fiscal year. If the applicant is a wholly-owned subsidiary
225 of another corporation, the applicant shall include the most recent
226 audited consolidated annual financial statements of the parent
227 corporation or the applicant's most recent audited consolidated annual
228 financial statement, and the most recent audited unconsolidated
229 financial statement of the applicant, including its balance sheet and
230 receipts and disbursements for the preceding year. If the applicant is
231 publicly traded, the applicant shall include a copy of the most recent
232 10-K report that such applicant filed with the Securities Exchange
233 Commission or, if the applicant is a wholly-owned subsidiary of a
234 publicly traded company, a copy of the parent company's most recent
235 10-K report that was filed with the Securities and Exchange
236 Commission. If the applicant or parent company of a wholly-owned

237 subsidiary applicant is publicly traded on a foreign exchange, the
238 applicant shall include a copy of documentation similar to the 10-K
239 report that was filed with the applicable securities regulator.
240 Notwithstanding the provisions of this clause, if the applicant or
241 parent company of a wholly-owned subsidiary applicant has operated
242 for not more than one calendar year, the applicant shall only be
243 required to include an initial statement of condition;

244 (ii) A list of the applicant's permissible investments, the book and
245 market values of such investments, and the dollar amount of the
246 applicant's aggregate outstanding money transmissions (I) as of the
247 date of the financial statement filed in accordance with clause (i) of this
248 subparagraph; and (II) as of a date no earlier than thirty business days
249 prior to the filing of the application;

250 (iii) (I) The surety bond required by subsection (a) of section 36a-
251 602, if applicable;

252 (II) A list of the investments maintained in accordance with
253 subsection (d) of section 36a-602, if applicable, and the book and
254 market values of any such investments as of the date of the financial
255 statement filed in accordance with clause (i) of this subparagraph; and
256 as of a date no earlier than thirty business days prior to the filing of the
257 application;

258 (iv) A statement describing the type of money transmission business
259 that will be conducted by the applicant in this state and whether such
260 money transmission will include the transmission of monetary value in
261 the form of virtual currency;

262 (v) The name and address of any financial institution used by the
263 applicant for its money transmission business in this state;

264 (vi) For each authorized delegate, a sample of the contract
265 evidencing the proposed arrangement between the applicant and the
266 authorized delegate; and

267 (vii) Any other information the commissioner may require.

268 Sec. 3. (*Effective October 1, 2019*) Not later than January 1, 2021, the
 269 Banking Commissioner shall submit a report, in accordance with the
 270 provisions of section 11-4a of the general statutes, to the joint standing
 271 committee of the General Assembly have cognizance of matters
 272 relating to banking. The report shall include, but not be limited to, (1)
 273 the number of licensees making or offering shared appreciation
 274 agreements, (2) the number of enforcement actions taken by the
 275 Department of Banking in connection with shared appreciation
 276 agreements, and (3) policy recommendations, if any, regarding shared
 277 appreciation agreements.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2019</i>	36a-485
Sec. 2	<i>October 1, 2019</i>	36a-598(a)
Sec. 3	<i>October 1, 2019</i>	New section

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 20 \$	FY 21 \$
Banking Dept.	BF - Potential Revenue Gain	Less than \$5,000	Less than \$5,000

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill requires: 1) certain individuals that make or offer shared appreciation agreements to be licensed and regulated by the Department of Banking, and 2) the Banking Commissioner to submit a report regarding such licensees by January 1, 2021.

It is anticipated that less than five individuals per year would be licensed, resulting in an estimated potential revenue gain of less than \$5,000 annually.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of individuals licensed.

OLR Bill Analysis**sHB 6995*****AN ACT CONCERNING SHARED APPRECIATION AGREEMENTS AND CERTAIN START-UP COMPANIES ENGAGED IN THE ACTIVITY OF MONEY TRANSMISSION.*****SUMMARY**

This bill makes “shared appreciation agreements” residential mortgage loans, thus (1) subjecting the agreements to existing law’s residential mortgage requirements and (2) generally requiring individuals making or offering these agreements to be licensed and regulated by the Banking Department (see BACKGROUND).

Under the bill, a shared appreciation agreement is a nonrecourse obligation in which money is advanced to a consumer in exchange for (1) an equity interest in their residential real estate or (2) a future obligation to repay under certain circumstances, including a transfer of ownership, maturity date, borrower’s death, or another circumstance outlined and explicitly agreed to.

The bill also requires the banking commissioner to submit a report to the Banking Committee by January 1, 2021, on (1) the number of licensees making or offering shared appreciation agreements and any associated enforcement actions, and (2) any shared appreciation agreement policy recommendations.

The bill also exempts an applicant for a money transmitter license from the requirement to submit audited financial statements to the commissioner if the applicant or its parent company (if it is a wholly-owned subsidiary), has operated for one year or less. Instead, such an applicant is only required to submit an initial statement of condition.

EFFECTIVE DATE: October 1, 2019

BACKGROUND

Residential Mortgage Loans

By law, the banking department licenses and regulates several entities that offer or conduct business involving residential mortgages, including mortgage lenders, correspondent lenders, originators, servicers, brokers, and lead generators. With respect to residential mortgage loans, these licensees are subject to reporting, oversight, advertising, and bond requirements, among others. Licensees are generally subject to the banking commissioner’s investigation and examination authority, and may be subject to penalties for violating the provisions of Title 36a.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 9 Nay 6 (03/12/2019)