

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 21-138—sSB 848

Banking Committee

**AN ACT IMPLEMENTING THE DEPARTMENT OF BANKING'S
RECOMMENDED CHANGES TO THE BANKING STATUTES
CONCERNING FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
LICENSES**

SUMMARY: This act makes the following changes in the state's banking statutes:

1. allows a Connecticut or out-of-state bank with less than \$10 billion in assets to receive public deposits by meeting certain federal community bank leverage ratio (CBLR) requirements (§ 2);
2. codifies a federal law that allows someone to temporarily act as a mortgage loan originator while applying for a Connecticut license (§§ 5 & 6);
3. exempts certain people from lead generation licensure if they only incidentally perform these activities (§ 6);
4. authorizes the Department of Banking (DOB) to regulate individuals offering shared appreciation mortgages (§ 5);
5. limits when a “change of control” occurs for certain licenses (§§ 7-10, 12-14 & 18-19);
6. expands the definition of “consumer debtor” to include anyone who owes a municipal debt resulting from property tax, instead of only personal property tax, thus subjecting real property tax debt buyers to state consumer collection laws (§ 16);
7. requires a consumer collection agency license applicant that is solely engaged in debt buying to show a positive tangible net worth (existing law requires those not solely engaged in debt buying to show tangible net worth of at least \$50,000) (§ 17);
8. eliminates the requirement that the DOB commissioner endorse a Connecticut credit union's amended certificate of incorporation (§ 4);
9. exempts certain money transmitter license applicants from audit requirements, and limits the type of required financial statements for applicants that are subsidiaries of a parent company (§ 11); and
10. allows a Connecticut bank that is a subsidiary of a holding company to submit a consolidated audit without the commissioner's approval under certain circumstances (§ 1).

The act also makes many technical, minor, and conforming changes, including one to clarify that a “retail seller” under the retail installment sales financing laws includes sellers using installment loan contracts (§ 15).

EFFECTIVE DATE: October 1, 2021

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§ 2 — COMMUNITY BANK LEVERAGE RATIO

The act allows banks that opt into the CBLR capitalization requirements (see BACKGROUND) to receive public deposits without also meeting certain risk-based capital standards required by prior law. (Different requirements generally apply to new banks and uninsured banks.)

Under the act, these banks are eligible for public deposits by maintaining (1) a tier 1 leverage ratio of greater than 9% and (2) segregated eligible collateral of at least 10% of uninsured deposits. A “tier 1 leverage ratio” is the ratio of certain equity and reserves (e.g., cash reserves) to risk-weighted assets and liabilities. Existing law allows banks to receive public deposits by:

1. maintaining eligible collateral of at least 25% of their uninsured public deposits;
2. for banks with a tier 1 leverage ratio of at least 6% and a risk-based capital ratio of at least 12%, maintaining 10% eligible collateral of uninsured deposits; or
3. for banks with a tier 1 leverage ratio of less than 5% or a risk-based capital ratio of less than 10%, maintaining at least 110% eligible collateral of uninsured public deposits.

The act correspondingly incorporates into existing public depository laws banks that opt into CBLR, by:

1. requiring CBLR banks with a 9% or less tier 1 leverage ratio to transfer eligible collateral to the trust department of a financial institution that is not owned or controlled by the bank or a holding company that owns or controls it, or to a federal reserve or home loan bank;
2. requiring CBLR banks with a tier 1 leverage ratio greater than 9% to transfer eligible collateral to their own trust department or one of another financial institution, or to a federal reserve or home loan bank; and
3. for CBLR banks with tier 1 leverage ratios greater than 9% that are under formal regulatory orders unrelated to capital, asset quality, earnings, or liquidity, allowing them to lower the minimum eligible collateral amount from 110% to 50% of uninsured deposits.

The act also changes the collateral transfer requirements for other banks. Under prior law, banks and out-of-state banks had to transfer eligible collateral to their own trust department or one of another financial institution, or to a federal reserve or home loan bank, if they had a tier 1 leverage ratio of at least 5% or a risk-based capital ratio of at least 10%. Under the act, banks must complete this transfer if they meet both minimums.

§§ 5 & 6 — TEMPORARY AUTHORITY FOR MORTGAGE LOAN ORIGINATORS

The act codifies a federal law that allows an individual to temporarily act as a mortgage loan originator while applying to DOB for a Connecticut license (P.L. 115-174, § 106). By law, mortgage loan originators take residential mortgage loan applications or offer or negotiate the terms of these loans.

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Qualifications

Under the act, to qualify for the temporary authority, an applicant must be employed by a Connecticut-licensed mortgage lender, correspondent lender, or broker.

Applicants employed by a Connecticut-licensed lender or broker must be registered in the Nationwide Mortgage Licensing System and Registry (NMLS, see BACKGROUND) as a loan originator during the year immediately before submitting, as part of the application process, (1) certain information the law requires on personal history and experience and (2) an authorization for credit and background checks (see below). Applicants licensed in another state as a mortgage loan originator must maintain a unique identifier through the NMLS and be licensed during the 30 days immediately before submitting the same information.

By law, unchanged by the act, licensure applicants must submit information on their identity, including personal history and experience; authorizations for credit and criminal background checks; and information on administrative, civil, or criminal findings (CGS § 36a-488).

Additional Requirements for Exercising Temporary Authority

The act prohibits a licensure applicant from exercising temporary authority if he or she:

1. had a loan originator license application denied, or a license revoked or suspended in another jurisdiction;
2. was subject to or served with a cease and desist order in another jurisdiction or by the federal Bureau of Consumer Financial Protection regarding NMLS compliance; or
3. was convicted of a crime that would preclude licensure under existing law, such as fraud or money laundering (CGS § 36a-489).

Duration of Temporary Authority

Under the act, temporary authority to act as a mortgage loan originator begins the day an eligible individual submits his or her Connecticut license application and ends when:

1. the applicant withdraws the application, or the DOB commissioner denies it;
2. the DOB commissioner issues the license; or
3. 120 days pass after the application's submission, if the application is incomplete.

Compliance With State Law

Under the act, anyone who acts with temporary authority as a mortgage loan originator, or employs such an individual, is subject to state laws to the same

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extent as if the person or employee was a licensed mortgage loan originator in the state.

§ 6 — LEAD GENERATOR LICENSE EXEMPTION

The act extends the mortgage lead generator licensure exemption to bank or credit union affiliate employees who have certain other credentials and perform lead generation activities only incidentally to their regulated activities by referring leads to the bank or credit union.

By law, a lead generator is a mortgage professional who receives or expects compensation or gain for providing information identifying new customers for residential mortgage loans (CGS § 36a-485). DOB licenses lead generators, but the law provides several exemptions, including for federally insured banks and credit unions and their subsidiaries, certain other licensed mortgage professionals, consumer reporting agencies, and lead generator employees.

The act extends the exemption to federally insured bank and credit union affiliates' employees who:

1. are registered or licensed with a state or federal regulator to perform securities brokerage, investment advisory, or insurance sales activities and
2. perform lead generation services by referring leads to the bank or credit union for which they work.

Under the act, a bank or credit union affiliate is an entity that is controlled by or under common control with the bank or credit union. This means the bank or credit union must:

1. own, control, or have the power to vote more than 50% of any of the affiliate's voting securities classes, either directly or through one or more persons;
2. control the election of the majority of the affiliate's directors or trustees;
- or
3. exercise a controlling influence over the affiliate's management or policies.

§ 5 — SHARED APPRECIATION MORTGAGES

The act makes "shared appreciation agreements" residential mortgage loans, thus (1) subjecting them to existing law's residential mortgage requirements and (2) generally requiring individuals making or offering them to be licensed and regulated by DOB.

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

By law, DOB licenses and regulates several entities that offer or conduct business involving residential mortgages, including mortgage lenders, correspondent lenders, originators, servicers, brokers, and lead generators. Residential mortgage loan licensees are subject to reporting, oversight,

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advertising, and bond requirements, among others. Licensees are generally subject to the DOB commissioner's investigation and examination authority and may face penalties for violating state banking laws.

§§ 7-14 & 18-19 — CHANGE OF CONTROL

By law, DOB-issued consumer credit licenses are not transferable or assignable. Licensees must file an advance change notice and receive the commissioner's approval before changing a control person, excluding changing a director, general partner, or executive officer, not due to an acquisition or other change of control.

The act specifies that for certain licenses a "change of control" is a change that causes a licensee's majority ownership, voting rights, or control to be held by a different control person or group of control persons. Consequently, it does not involve minor ownership changes. The definition applies to the following license categories: mortgage lender, correspondent lender, broker, or servicer; lead generator; sales finance; small loan; check cashing; money transmission; debt adjuster or negotiator; consumer collection; and student loan servicer.

§ 4 — AMENDMENTS TO CONNECTICUT CREDIT UNION CERTIFICATES OF INCORPORATION

The act eliminates the requirement that the DOB commissioner endorse an amendment to a Connecticut credit union's certificate of incorporation. It does so by requiring the (1) credit union to file a copy of the certificate of amendment, instead of the original, with the commissioner and (2) commissioner to approve the amendment if it meets existing statutory criteria, rather than endorse the original and return it to the credit union. By law, an amendment is effective upon the filing of its original certificate with the secretary of the state.

§ 11 — MONEY TRANSMITTER LICENSE APPLICANT AUDITING REQUIREMENTS

The act exempts a money transmitter license applicant from needing to submit audited financial statements to the commissioner if the applicant has operated for one year or less. Instead, the applicant must only submit an initial statement of condition.

The act also requires initial applicants that are a wholly-owned subsidiary of a parent company to include with the application the parent company's most recent audited consolidated annual financial statements. Prior law required them to include (1) either this information or the most recent audited consolidated annual financial statement, and (2) the most recent audited unconsolidated financial statement, including the balance sheet with receipts and disbursements for the prior year.

§ 1 — CONNECTICUT BANK AUDIT REQUIREMENTS

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To meet annual audit requirements, the act allows a Connecticut bank that is a subsidiary of a holding company to submit a signed, consolidated audit report of the holding company in lieu of that of the bank without the commissioner's approval, which prior law required. But it allows the commissioner, for good cause, to require an individual audit report for the bank instead.

BACKGROUND

CBLR

Federal regulations require most banks to meet minimum capital requirements, which include having a tier 1 capital ratio of 6% and a leverage ratio of 4% (12 C.F.R. § 324.10). However, banks with less than \$10 billion in assets and that meet other requirements (e.g., leverage ratio greater than 9%) may instead use CBLR to meet the minimum capital requirements (12 C.F.R. § 324.12).

NMLS

NMLS is a license and registration system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the mortgage and other finance services industry (CGS § 36a-2).

Related Act

PA 21-130, § 5, includes substantially similar "change of control" provisions for student loan servicer licensees.