OLR Bill Analysis

sSB 268 (File 148, as amended by Senate "A")*

AN ACT CONCERNING VARIOUS REVISIONS TO THE BANKING STATUTES.

SUMMARY

This bill makes various changes to statutes governing banking department licensees. Principally, it:

1. expands the definition of "sales finance company" to include any business that receives principal and interest payments from a retail buyer under a retail installment or installment loan contract, regardless of whether they own or have ever conveyed, assigned, or transferred the loan (§ 1);

2. for money transmitters licensees, expands the definition of "control" and "control person" to incorporate key individuals and exclude passive investors, specifically as these individuals relate to notifying the department of a "change of control" (§§ 2 & 3);

3. requires certain mortgage servicers that service at least 2,000 residential loans to meet minimum capital and liquidity requirements, establish a board of directors, conduct annual audits, and establish a risk management program (§ 4);

4. adopts several remote work provisions for mortgage lenders, correspondent lenders, and brokers (§ 5);

5. requires mortgage lenders, correspondent lenders, and brokers to file a surety bond covering their main office and any branch office, rather than file one for the main office and an addendum for branch offices, as required under current law (§ 6);

6. requires applicants for a debt negation branch office license must

file a surety bond for the same $50,000 that existing law requires for main office license applications, and specifies that a bond must be filed for each licensed location (main and branch offices) (§ 7);

7. increases the required bond amount for consumer collection agency license renewals from $25,000 to $50,000 for each main or branch office and expands the types of banks consumer collection licensees can deposit debtor money into, (§§ 8-10);

8. specifies that a "commercial mortgage loan originator" who is exempt from certain state overtime laws as a highly compensated employee is a person who "takes" commercial loan applications, rather than accepts these applications (§ 11);

9. requires the Department of Banking (DOB) commissioner, when deciding whether to approve a new loan production office for certain banks, to consider the bank's record of compliance with the federal Community Reinvestment Act (CRA) and overall CRA rating (§§ 12-13);

10. establishes a CRA working group (§§ 14);

11. restricts who is considered an obligor for purposes of calculating a bank's liabilities by excluding anyone who is a "guarantor" or "indemnitor" of a direct or indirect liability under specified conditions (§ 15);

12. authorizes the banking commissioner to adopt regulations to implement existing law on repossessions (§ 16); and

13. makes technical and conforming changes, including to certain municipal tax lien, Department of Housing, and Connecticut Housing Finance Authority (CHFA) statutes (§§ 17-19).

*<u>Senate Amendment "A"</u> (1) increases the consumer collection agency bond amount from $25,000 for a main office under current law to $50,000, instead of $100,000 as in the underlying bill; (2) adds the CRA, obligors, and repossession notice provisions; (3) changes the

effective date from upon passage to October 1, 2022, for provisions on consumer collection agency bond requirements, and (4) makes minor, technical and conforming changes.

EFFECTIVE DATE: October 1, 2022, except the provisions on remote supervision and work provisions; mortgage licensee and debt negotiator bond requirements; and expanding the banks eligible for consumer collection agency deposit are effective upon passage.

§§ 2 & 3 — MONEY TRANSMITTERS

By law, money transmitter licenses are not transferable or assignable. Under current law, licensees must file an advance change notice and receive the commissioner's approval before changing a control person, unless it is a change of a director, general partner, or executive officer, unrelated to an acquisition or other change of control. The bill exempts key individuals under the same circumstances instead of directors, general partners, or executive officers. Under the bill, a "key individual" is any person ultimately responsible for establishing or directing a licensee's policies or procedures, including an executive officer, manager, director, or trustee.

The bill also allows "passive investors" into the definition of "control person," generally allowing certain individuals between 10% and 25% of voting rights to rebut a presumption of control; and

Control Person

Under the bill, a control person is any person in control of a licensee or applicant, any person that seeks to acquire control of a licensee, or a key individual. "Control" is the power to:

1. vote, directly or indirectly, at least 25% of the outstanding voting shares or interests of a licensee or a person in control of the licensee;

2. elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other people exercising managerial authority of a person in control of a licensee; or

3. exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of them.

The bill specifies that, for the purposes determining the percentage of control, a person's interests are aggregated with those of his or her immediate family members, including spouse, parents, children, siblings, in-laws, and any person sharing their home.

The bill presumes a person is exercising a controlling influence when he or she holds at least 10% of the voting rights of a licensee or person in control of the licensee. However, "passive investors" can rebut this presumption. Under the bill, a passive investor is someone who:

1. does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees or other persons exercising managerial authority of a person in control of a licensee;

2. is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

3. does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

4. attests to meeting these requirements in a form and manner the banking commissioner prescribes.

Under current law, a "control person" is an individual that directly or indirectly exercises control over another person. The following people are presumed to be control persons under current law: directors, general partners, executive officers, individuals holding the rights to at least 10% of voting shares, managing members of limited liability companies, and any individual holding the right to receive at least 10% or more of a partnership's capital after dissolution. In changing the definition of "control person," the bill applies the new expanded definition to several other money transmitter statutes, including requirements related to licensing and the commissioner's authority to enforce statutory requirements, including the:

1. range of people on whom the commissioner can perform background checks;
2. reasons and extent to which the commissioner can take disciplinary action against a licensee;
3. range of people whose character the commissioner must assess, including their capability to demonstrate financial responsibility; and
4. range of people prohibited from fraud and other actions.

§ 4 — MORTGAGE LOAN SERVICERS

The bill imposes capital and liquidity requirements on certain covered institutions that service 2,000 or more residential mortgage loans. Among other things, these provisions require covered institutions to establish and maintain a board of directors, conduct annual audits, and create risk management programs.

Covered Institutions

Under the bill, a "covered institution" is a mortgage servicer that services (or subservices for others) at least 2,000 mortgage loans that are primarily for personal, family, or household use and secured by residential property in the United States. This threshold excludes owned whole loans (i.e., loans the lender retains in their portfolio) and loans being interim serviced, prior to sale, as reported on the system (i.e., NMLS, a license and registration system used nationwide) or another document the commissioner requires. ("Interim serviced" is the process of collecting mortgage payments for up to 90 days before selling the loan on the secondary market.)

Excluded from covered institutions are:

1. certain people exempt from mortgage servicer licensing (i.e., banks and certain bank subsidies),
2. any federally tax-exempt mortgage servicer, and

3. any agency that existing state law exempts from mortgage servicer requirements (e.g., state, municipal or federal agencies, people servicing five or fewer mortgage loans a year, and bona fide nonprofit organizations making residential mortgage loans to promote home ownership for economically disadvantaged individuals).

Capital and Liquidity Requirements

Under the bill, covered institutions must maintain requirements for minimum capital ratio, net worth, and liquidity outlined in the Federal Housing Finance Agency's Eligibility Requirements for Enterprise with Single-Family Seller/Servicers. They must do so regardless of their approval for government sponsored enterprise servicing.

The bill also requires covered institutions to maintain:

1. sufficient allowable assets for liquidity to cover normal business operations, in addition to the amounts required for servicing liquidity and

2. sound cash management and business operating plans commensurate with its institutional complexity to ensure normal business operations.

Under the bill, a covered institution must have written policies and procedures implementing these capital and servicing liquidity requirements, including a sustainable written methodology for satisfying the bill's requirements. Additionally, a covered institution must develop, establish, and implement plans, policies, and procedures for maintain operating liquidity sufficient for its ongoing needs, including sustainable, written methodologies for maintain sufficient operating liquidity.

Under the bill, "allowable assets for liquidity" are assets that may be used to satisfy liquidity requirements, including unrestricted cash and cash equivalents and unencumbered investment grade assets held for sale or trade (including mortgage backed securities held by Fannie Mae, Freddie Mac, Ginnie Mae, and U.S. treasury-backed obligations).

For the purposes of complying with these requirements, all financial data must be determined according to generally accepted accounting principles (GAAP). Additionally, an institution's reverse mortgage portfolio is excluded from these calculations.

The bill excludes from these requirements any mortgage servicers that solely (1) own reverse mortgage loans or conducts reverse mortgage services, or (2) subservice others' loans with no responsibility to advance money in connection with these activities.

Board of Directors

The bill requires covered institutions to establish and maintain a board of directors responsible for its oversight. For institutions that are not approved to service government sponsored enterprise loans or Ginnie Mae loans, or where a federal agency has granted approval for a board alternative, an institution may establish a similar governing body to fulfill these oversight responsibilities.

Under the bill, the board (or similar governing body) must:

1. establish a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance;

2. monitor and ensure institutional compliance with existing mortgage servicing statutes, including accurately and timely completing and submitting all regulatory reports (including the mortgage call report); and

3. establish internal audit requirements appropriate for the institution's size, complexity and risk profile, including appropriate independence to provide a reliable evaluation of the servicer's internal control structure, risk management, and governance.

Audits

The bill requires covered institutions to annually procure an external audit from an independent public accountant. The audit must include:

1. audited financial statements, including a balance sheet, income statement, cash flow, and notes and supplemental schedules prepared in accordance with GAAP;

2. an assessment of the institution's internal control structure;

3. a computation of its tangible net worth;

4. validation of its applicable mortgage servicing rights valuation and reserve methodology;

5. verification of adequate fidelity and errors and omissions insurance; and

6. testing of risk management controls, including applicable compliance and stress testing.

Risk Management Program

Under the bill, covered institutions must establish a risk management program, under the board's oversight, that identifies, measures, monitors, and controls risk commensurate with the institution's complexity. The program must:

1. have the appropriate processes and models in place to measure, monitor and mitigate financial risk and changes to the institution's risk profile and that of its serviced assets; and

2. be scaled to the institution's complexity.

The program must be sufficient to manage the institution's risks, including the following risks:

1. credit (i.e., the risk that a borrower or counterparty will fail to perform on an obligation);

2. liquidity (i.e., the risk that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding);

3. operational (i.e., the risk resulting from inadequate or failed

internal processes, people, and systems or from external events);

4. market (i.e., the risk to the servicer's condition due to adverse market conditions);

5. compliance (i.e., the risk of regulatory sanctions, fines, penalties, or losses due to failure to comply with laws, rules, regulations, or other applicable supervisory requirements);

6. legal (i.e., the risk that potential actions against the servicer that result in unenforceable contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively affect its operations); and

7. reputation (i.e., the risk to earnings and capital from negative publicity).

Covered institutions must annually conduct a risk management assessment and provide a written report to the board of directors that includes (1) evidence of risk management activities, (2) any adverse risk management findings, and (3) proposed corrective action.

If the commissioner finds any significant risks after an investigation, inquiry, or examination, the bill allows him to order or direct the institution to take additional actions necessary to ensure it operates in a safe and sound manner and complies with applicable laws.

§ 5 — REMOTE WORK AND SUPERVISION FOR MORTGAGE LENDERS, CORRESPONDENT LENDERS, BROKERS AND LOAN ORIGINATORS

The bill allows mortgage lenders, correspondent lenders, and brokers to remotely supervise licensed activities at main and branch offices.

By law, an applicant for a mortgage lender, correspondent lender, or broker license must be supervised by a qualified individual at the main or branch office where they work. Current law requires these qualified individuals to live within 100 miles of the office and be capable of providing fulltime, in-person supervision. Under the bill, an applicant must instead demonstrate to the banking commissioner’s satisfaction that the qualified individual can provide full time supervision. Unchanged by the bill, licensees supervising each office must still meet net worth and experience requirements, such as having at least three years immediate experience to supervise a branch office.

The bill similarly allows loan originators to work remotely by eliminating the requirement that they operate from an office. The bill also makes a corresponding change allowing qualified individuals and branch managers to supervise loan originators remotely by eliminating the requirement they live within 100 miles of the licensed office.

§§ 8 - 10 – CONSUMER COLLECTION AGENCY LICENSEES

Increased Surety Bond Amount (§§ 8 & 9)

Under current law, a consumer collection agency licensee applying for license renewal must file either an individual bond of $25,000 for each place of business (i.e., main or branch office) or a single bond of $25,000 per office that covers all of them. The bill increases the required bond amount to $50,000 for main offices and $50,000 for branch offices.

As under existing law, consumer collection agencies that solely buy debt are exempt from the bond requirements.

Out-of-State Bank Deposits (§ 10)

Existing law requires consumer collection agencies to deposit funds they receive from debtors into trust accounts held at certain types of financial institutions. Under current law, they may deposit these funds in out-of-state banks only if they have a Connecticut branch; the bill eliminates this Connecticut branch requirement.

§§ 12 - 14 – COMMUNITY REINVESTMENT ACT

The bill requires the Department of Banking (DOB) commissioner, when deciding whether to approve a new loan production office for a Connecticut bank or an out-of-state bank (but not a foreign bank), to consider the bank's (1) record of compliance with the federal Community Reinvestment Act (CRA) and (2) overall CRA rating (see BACKGROUND).

By law, Connecticut banks must have the commissioner's approval to establish a loan production office in this state or in another state. Out-of-state banks, other than foreign ones, must similarly have the commissioner's approval to establish a loan production office in Connecticut.

The bill also requires the Banking Committee chairpersons to convene and chair a 13-member working group to (1) examine CRA, including monitoring proposed changes to it and (2) recommend ways to incentivize banks and credit unions to provide certain products and services. The working group must report its findings and recommendations to the Banking Committee by February 1, 2024.

CRA Working group

Under the bill, the working group must examine CRA, including monitoring proposed changes to it, and make recommendations and submit comments to federal regulators and Connecticut's federal legislative delegation. The working group must also recommend ways to incentivize banks and credit unions to open branches in communities without adequate banking services and offer loan products to people in low- and moderate-income neighborhoods.

The bill requires the working group to report its findings and recommendations to the Banking Committee by February 1, 2024. The group terminates on the date it submits the report, or February 1, 2024, whichever is later.

The working group consists of the following members:

1. the Banking Committee's chairpersons, vice chairpersons, and ranking members;
2. the DOB commissioner, or his designee;
3. one representative each of the Connecticut Bankers' Association and the Credit Union League of Connecticut (presumably, designated by the respective organizations);

4. a representative of Connecticut banks, appointed by the House minority leader;

5. a representative of Connecticut credit unions, appointed by the Senate minority leader; and

6. two representatives of organizations representing the interest of low- and moderate-income communities without adequate banking services, one each appointed by the House speaker and Senate president pro tempore.

All initial appointments to the working group must be made by October 31, 2022. The appointing authority must fill any vacancies.

Under the bill, the Banking Committee's chairpersons serve as the group's chairpersons and schedule the working group's first meeting, which must be held by November 30, 2022. The Banking Committee's administrative staff must serve as the working group's administrative staff.

§ 15 – OBLIGORS

Existing law limits the total liabilities of any one obligor (i.e., borrower) to a Connecticut bank. The limit is a specified percentage of the bank's equity capital and loan and lease loss reserves (generally 15% for unsecured liabilities and 10% for secured liabilities). The bill restricts who is considered an obligor for these purposes by excluding anyone who is a "guarantor" or "indemnitor" of a direct or indirect liability under specified conditions.

Under the bill, a guarantor or indemnitor is excluded as an obligor when:

1. the bank primarily relies on the "primary obligor's" general credit standing (except as described below),

2. there is no aspect of the loan that is being made as an exception to the bank's lending policies,

3. the guarantor or indemnitor is not an obligor under state law's

direct benefit or common enterprise tests, and

4. if the primary obligor is not a natural person, the bank seeks repayment of the liability from the primary obligor's business operations and primarily relies on the business forecast of its operations.

Under the bill, a "primary obligor" is anyone named as a borrower or debtor, and not a guarantor or indemnitor, in a direct or indirect liability. A "guarantor" is anyone obligated to pay a direct or indirect liability when the primary obligor has defaulted on the liability under its terms. An "indemnitor" is anyone who becomes obligated to pay a direct or indirect liability under an indemnity agreement.

§ 16 – REPOSSESSION NOTICES

Existing law allows certain lenders to repossess goods, such as motor vehicles, when a buyer fails to make payment or fulfill another contractual obligation. It prescribes the procedures that lenders must follow to repossess, have a borrower redeem, and complete a resale of the goods.

This bill authorizes the Department of Banking commissioner to adopt regulations to implement this law.

§ 17- 19 – TECHNICAL AND CONFORMING CHANGES

This bill makes technical and conforming changes to certain municipal tax lien, Department of Housing, and Connecticut Housing Finance Authority (CHFA) statutes, including by specifying that a homeowner receiving CHFA emergency lien payments must make monthly payments to the authority in at least the amount they would have paid towards liens. (This is a conforming change to PA 21-44, which established the emergency lien assistance program within CHFA's existing Emergency Mortgage Assistance Program.)

BACKGROUND

Related Bills

sSB 178 (File 50), favorable reported by the Banking Committee, contains identical Community Reinvestment Act provisions.

sHB 5220 (File 106), favorably reported by the Banking Committee, contains identical provisions concerning obligors.

SB 270 (File 162), favorably reported by the Banking Committee, contains identical provisions concerning repossession notices.

HB 5217 (File 43), favorably reported by the Banking Committee, contains identical technical and conforming changes as §§ 17-19 of this bill.

CRA

Congress enacted the federal CRA in 1977 to encourage regulated financial institutions to help meet their communities' credit needs (e.g., lending, investing, and providing services), including low- and moderate-income neighborhoods' needs, consistent with bank safety and soundness. It requires federal bank regulators to assess a bank's performance record, assign it a CRA rating ranging from "outstanding" to "substantial noncompliance," and consider the rating when deciding to approve an application for a new branch, a merger, or certain other activities (12 U.S.C. § 2901, et seq.).

COMMITTEE ACTION

Banking Committee

Joint Favorable
Yea 17 Nay 0 (03/15/2022)