**PA 22-94**—sSB 268
*Banking Committee*

# AN ACT CONCERNING VARIOUS REVISIONS TO THE BANKING STATUTES

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## § 1 — SALES FINANCE COMPANY

*Extends sales finance company licensure requirements to cover non-owners of retail installment and installment loan contracts (e.g., servicers)*

The act expands the definition of "sales finance company" to include any person engaging in the in-state business of receiving principal and interest payments from a "retail buyer" under a "retail installment contract" or "installment loan contract" as state law defines those terms. It does so by eliminating language that conditioned inclusion on whether these people owned or had conveyed, assigned, or transferred any interest in the contract to another person. Effectively, it extends the definition to non-owners such as servicers.

In doing so, the act subjects these people to all the sales finance company licensure requirements in state law such as the application process, criminal history record checks, liability for investigation and examination costs, and a biennial license fee of $400 (CGS §§ 36a-536 to -539). It also subjects them to fines of up to $500, imprisonment for up to six months, or both, for violations of these requirements (CGS § 36a-546).
EFFECTIVE DATE: October 1, 2022

## §§ 2 & 3 — MONEY TRANSMITTERS

*Alters who is considered to have control of a state money transmitters licensee and the exemption from the notice and approval requirements when changing any control person of the licensee*

### *Control of a Money Transmitter Licensee (§ 2)*

The act makes several definitional changes that alter the scope of the state's money transmitter statutes, including the:

1. range of people on whom the banking commissioner can perform

background checks (CGS § 36a-598);

2. reasons and extent to which the commissioner can take disciplinary action against a licensee (CGS § 36a-608);
3. range of people whose character the commissioner must assess, including their capability to demonstrate financial responsibility (CGS § 36a-600); and
4. range of people prohibited from fraud and other actions (CGS § 36a-607).

Principally, the act changes who is considered to have control of a money transmitter licensee. Under prior law, "control" meant the power, directly or indirectly, to direct the licensee's management or policies (CGS § 36a-485(4)). The act specifies that this includes individuals who have certain voting or appointment powers or controlling influence. Specifically, under the act, "control" is the power to do the following:

1. vote, directly or indirectly, at least 25% of the outstanding voting shares or interests of a money transmitter licensee or a person in control of the licensee;
2. elect or appoint a majority of "key individuals" (see below) 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 the licensee.

The act specifies that when 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 his or her home.

The act 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 act, a "passive investor" is someone who meets the following criteria:

1. does not have the power to elect a majority of "key individuals" (see below) or executive officers, managers, directors, trustees, or other people 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 directly or indirectly exercise 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 way the banking commissioner prescribes.

Relatedly, the act also changes the meaning of "control person" under the state's money transmitter laws. Under prior law, a "control person" was an individual who directly or indirectly exercises "control" (see above) over another person, and the following people were generally presumed to be control persons: directors, general partners, executive officers, individuals holding the rights to at least 10% of voting shares, managing members of limited liability companies, and any individuals holding the right to receive at least 10% or more of a partnership's capital after

dissolution. Under the act, a control person is any person in "control" (see above) of a money transmitter licensee or applicant, any person that seeks to acquire control of a licensee, or a "key individual" (see below).

*Change of a Control Person Notice and Approval (§ 3)*

By law, money transmitter licenses are not transferable or assignable. The act specifies that these licenses may be acquired subject to certain notice and approval requirements for changing a licensee's "control person" (see above), which the act modifies.

Generally, under existing law, an advance change notice must be filed at least 30 days before the effective date of a change in a licensee's control person, and the change cannot occur without the banking commissioner's approval. Prior law exempted from these requirements a change of a director, general partner, or executive officer that was not due to an acquisition or "change of control" (i.e., any change causing the majority ownership, voting rights, or control of a licensee to be held by a different control person or group of them). The act instead exempts changes of key individuals under the same circumstances. Under the act, a "key individual" is any person ultimately responsible for establishing or directing a licensee's policies and procedures, including an executive officer, manager, director, or trustee.

EFFECTIVE DATE: October 1, 2022

## § 4 — MORTGAGE LOAN SERVICERS

*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 create a risk management program*

The act imposes several requirements on certain mortgage servicers that generally service 2,000 or more residential mortgage loans (defined under the act as "covered institutions"). It requires them to meet certain minimum capital and liquidity requirements, establish and maintain a board of directors, conduct annual audits, and create a risk management program.

*Mortgage Servicers Subject to the Act*

The act's provisions apply to any mortgage servicer that services (or subservices for others) at least 2,000 mortgage loans that are primarily for personal, family, or household use and are secured by residential property in the United States. This threshold excludes owned whole loans (i.e., loans the lender retains in its portfolio) and loans being interim serviced prior to sale (i.e., the process of collecting mortgage payments for up to 90 days before selling the loan on the secondary market).

The provisions do not apply to the following:

1. certain entities exempt from the state's mortgage servicer licensing (i.e., specific banks, credit unions, and certain subsidiaries of them);

2. any federally tax-exempt mortgage servicer; and
3. any agency that existing state law exempts from mortgage servicer requirements (e.g., certain state, municipal, and 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*

With certain exceptions, the act requires covered mortgage servicers to maintain the minimum capital ratio, net worth, and liquidity set 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 act also requires them to maintain (1) sufficient "allowable assets for liquidity" (see below) 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 their institutional complexity to ensure normal business operations.

Under the act, a covered servicer must have written policies and procedures implementing these capital and servicing liquidity requirements, including a sustainable written methodology for satisfying the act's requirements. Additionally, they must develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for their ongoing needs, including sustainable, written methodologies for maintaining sufficient operating liquidity.

Under the act, "allowable assets for liquidity" are assets that may be used to satisfy the act's 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 complying with these requirements, all financial data must be determined according to generally accepted accounting principles (GAAP). Additionally, a servicer's reverse mortgage portfolio is excluded from these calculations.

The act excludes from these requirements any mortgage servicers that solely (1) own reverse mortgage loans or conduct reverse mortgage services or (2) subservice others' loans with no responsibility to advance money in connection with the subservicing.

*Board of Directors*

The act requires a covered mortgage servicer to establish and maintain a board of directors responsible for its oversight. Those that are not approved to service government sponsored enterprise loans or Ginnie Mae loans, or those that have been granted approval for a board alternative by a federal agency, may establish a similar governing body to fulfill these oversight responsibilities.

Under the act, the board (or similar governing body) must do the following:

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 servicer'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 act requires covered servicers to annually procure an external audit from an independent public accountant. The audit must include the following:

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 servicer'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 act, covered servicers must establish a risk management program under the board's oversight that identifies, measures, monitors, and controls risk commensurate with the servicer's complexity. The program must (1) have appropriate processes and models in place to measure, monitor, and mitigate financial risk and changes to the servicer's risk profile and that of its serviced assets and (2) be scaled to the servicer's complexity.

The program must also be sufficient to manage the servicer'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 or because it cannot easily unwind or offset specific exposures);
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 movements in rates or prices);

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 or condition); and
7. reputation (i.e., the risk to earnings and capital from negative publicity about the servicer's business practices).

Relatedly, covered servicers must annually conduct a risk management assessment and provide a written report on it to the board of directors that includes (1) evidence of risk management activities, (2) any adverse findings of the risk management program, and (3) proposed corrective actions to remedy any of those findings.

If the commissioner finds that a servicer's risk is significant after an investigation, inquiry, or examination, the act allows him to order or direct the servicer to take additional actions to ensure it operates in a safe and sound manner and complies with applicable laws.

EFFECTIVE DATE: October 1, 2022

## § 5 — REMOTE WORK FOR CERTAIN BANKING DEPARTMENT LICENSEES AND SUPERVISORS

*Adopts several remote work provisions for mortgage lenders, correspondent lenders, and brokers*

Prior law prohibited the banking commissioner from issuing a mortgage lender, mortgage correspondent lender, or mortgage broker license to an applicant unless he or she, among other things, had a supervisor who (1) lived within 100 miles of the applicant's office (including his or her main office and each branch office) and (2) could provide in-person office supervision. The act eliminates those geographic requirements and instead simply requires that applicants have a supervisor who can provide full-time office supervision. The act similarly allows mortgage loan originator licensees to work remotely by eliminating the requirement that they generally operate from an office within 100 miles of where they reside.

EFFECTIVE DATE: Upon passage

## § 6 — MORTGAGE LICENSEE SURETY BONDS

*Requires certain mortgage-related licensees to file a surety bond for each main and branch office*

The act requires licensed mortgage lenders, mortgage correspondent lenders, and mortgage brokers to file a surety bond for their main office and each branch office, instead of one for the main office and addendums for branch offices as prior law required.

EFFECTIVE DATE: Upon passage

## § 7 — DEBT NEGOTIATION LICENSEE SURETY BONDS

*Requires debt negotiation license applicants to file a bond for each main and branch office*

The act requires applicants for a debt negotiation license for a branch office to file a surety bond for the same $50,000 that existing law requires for main office license applications. It also specifies that a bond must be filed for each licensed location (i.e., main and branch offices) and makes conforming changes, including eliminating prior requirements for applicants to identify branch offices by addendum to the main office's surety bond.
EFFECTIVE DATE: Upon passage

## §§ 8 & 9 — CONSUMER COLLECTION AGENCY LICENSEE SURETY BONDS

*Increases the required bond amount on each office for consumer collection agency licensees*

The act increases the required bond amount for consumer collection agency licensees from $25,000 to $50,000 for each main and branch office. As under existing law, consumer collection agencies that solely buy debt are exempt from the bond requirements. The act eliminates an option for licensees holding, applying for, or seeking renewal of more than one license to either file (1) separate bonds for each office or (2) a single bond naming each office.
EFFECTIVE DATE: October 1, 2022

## § 10 — CONSUMER COLLECTION AGENCY LICENSEE DEPOSITS

*Expands the types of banks into which consumer collection agency licensees can deposit debtor money*

By law, when consumer collection agency licensees collect or receive payments from debtors, they must deposit them into trust accounts held at a federally insured bank, Connecticut or federal credit union, or out-of-state bank. However, prior law limited deposits into out-of-state banks to those that maintained a Connecticut branch. The act eliminates this geographical restriction, allowing deposits into any out-of-state bank.
EFFECTIVE DATE: Upon passage

## § 11 — TECHNICAL AND CONFORMING CHANGES

*Makes several technical and conforming changes*

By law, commercial mortgage loan originators who are "highly compensated employees," as described in federal law, are exempt from certain state overtime laws. The act changes part of the state law's definition of "commercial mortgage loan originator" to specify that it includes a person who "takes" commercial mortgage loan applications rather than "accepts" these applications as under prior law.
EFFECTIVE DATE: October 1, 2022

## §§ 12-14 — COMMUNITY REINVESTMENT ACT (CRA)

*Requires the banking commissioner, when deciding whether to approve a new loan production office for certain banks, to consider the bank's record of compliance with CRA and overall CRA rating; establishes a working group to examine CRA and recommend ways to incentivize banks and credit unions to provide certain products and services*

### *New Loan Production Offices (§§ 12 & 13)*

The act requires the banking 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 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.

### *CRA Working Group (§ 14)*

The act requires the Banking Committee chairpersons to convene and chair a 13-member working group to examine CRA, monitor 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 that lack adequate banking services and offer loan products to people in low- and moderate-income neighborhoods.

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

Under the act, the working group consists of the following members:

1. the Banking Committee's chairpersons, vice chairpersons, and ranking members;
2. the banking commissioner, or his designee;
3. one representative each of the Connecticut Bankers' Association and the Credit Union League of Connecticut;
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 interests of low- and moderate-income communities that lack 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 within 30 days after the act's effective date (i.e., by October 31, 2022). The appointing authority must fill any vacancies.

Under the act, the Banking Committee's chairpersons serve as the group's

chairpersons and schedule the working group's first meeting, which must be held within 60 days after the act's effective date (i.e., by November 30, 2022). The Banking Committee's administrative staff must serve as the working group's administrative staff.
EFFECTIVE DATE: October 1, 2022

## § 15 — OBLIGORS

*Restricts who is considered an obligor when calculating a Connecticut bank's liabilities by excluding anyone who is a "guarantor" or "indemnitor" of a direct or indirect liability under specified conditions*

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 act 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 act, 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 the bank primarily relies on the business forecast of its operations.

Under the act, 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.
EFFECTIVE DATE: October 1, 2022

## § 16 — REPOSSESSION NOTICES

*Authorizes the banking commissioner to adopt regulations to implement existing law on repossession of goods*

Existing law allows certain lenders to repossess goods, such as motor vehicles, when a buyer fails to pay 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.

The act authorizes the banking commissioner to adopt regulations to implement this law.
EFFECTIVE DATE: October 1, 2022

## §§ 17-19 — TECHNICAL AND CONFORMING CHANGES

*Makes technical and conforming changes to certain housing related statutes*

The act makes technical and conforming changes in 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.)
EFFECTIVE DATE: October 1, 2022

## BACKGROUND

### *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.).