OLR Bill Analysis

sSB 1033

AN ACT CONCERNING VARIOUS REVISIONS TO THE BANKING STATUTES.

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Generally applies a "capital and surplus" calculation to certain investment decision making of Connecticut banks (i.e., liabilities of borrowers, debt and equity securities, debt and equity mutual funds, social purpose investments, savings banks life insurance, mortgage lending, and real estate for the banks' business)

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Expands Connecticut credit unions' eligible membership by allowing them to (1) have a field of membership that includes both a common bond and a geographic community and (2) add associations, beyond those of members

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Requires the DOB commissioner to designate a bank merger ombudsman, within available appropriations, to help people with accounts at financial institutions when there are issues about the institution's merger with another financial institution

SUMMARY

This bill generally makes the following unrelated changes to banking statutes:

1. raises the small loan limit from $15,000 to $50,000, redefines "annual percentage rate" (APR), and requires small loan licensure of an exempt lender's agent or service provider under certain circumstances (§§ 1-5);

2. increases the maximum value of retail installment or installment loan contracts for consumer goods and equipment (§ 6);

3. allows for borrowers to cancel a guaranteed asset protection (GAP) waiver and receive a pro rata refund (§ 7);

4. prohibits certain licensed mortgage professionals from (a) using an unlicensed lead generator unless the lead generator is exempt from licensure or (b) helping a lead generator conduct business without a valid license to do so (§§ 9 & 10);

5. eliminates the requirement that mortgage servicer supervisors generally live within 100 miles of a branch office (§ 11);

6. expands the circumstances under which a financial institution does not need to provide notice of a deposit account's closure (§

13);

7. limits the required advertising and availability of basic bank accounts to banking institution branches and other offices in Connecticut (§ 14);

8. generally applies a "capital and surplus" calculation to certain investment decision making of Connecticut banks (e.g., liabilities of borrowers, debt and equity securities, debt and equity mutual funds, social purpose investments, and mortgage lending) (§§ 15-23);

9. expands Connecticut credit unions' eligible membership by allowing them to (a) have a field of membership that includes both a common bond and a geographic community and (b) add non-member associations (§ 24); and

10. requires the Department of Banking (DOB) commissioner, within available appropriations, to designate a bank merger ombudsman within the department (§ 25).

The bill makes numerous technical and conforming changes.

EFFECTIVE DATE: October 1, 2023, except as provided below.

§§ 1-5 — SMALL LOAN LENDING

Raises the small loan limit from $15,000 to $50,000; redefines APR; and requires small loan licensure of an exempt lender's agent or service provider under certain circumstances

Small Loan Amount

The bill increases the maximum small loan amount from $15,000 to $50,000. As under existing law, under the bill, these loans of between $5,000 and $50,000 have an APR capped at 25%.

APR Calculation

The bill also shifts, from the Truth-in-Lending Act to the Military Lending Act (MLA), the federal law used to calculate APR for purposes of these loans. It deems the following finance charges for APR calculation purposes:

1. certain premiums or fees specified under MLA regulations (e.g., credit insurance premiums or fees, consumer credit application fees, or debt cancellation or suspension fees);

2. a charge for an ancillary product, membership, or service that is sold in connection or concurrent with a small loan;

3. an amount offered or agreed to by a borrower to obtain credit or to compensate for the use of money; and

4. a fee charged, agreed to, or paid by a borrower that is related to a small loan.

Small Loan Licensure

The law has several exemptions to small loan licensure, such as for banks or credit unions, their subsidiaries, and their servicers under certain conditions; licensed pawnbrokers; consumer collection agencies; passive buyers of small loans; and retail sellers.

The bill requires anyone who alleges to act as an agent, service provider, or in any other capacity for one of the small loan law's exempt entities to be licensed in the following situations:

1. the person holds, acquires, or maintains the predominant economic interest in the loan;

2. the person markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or right of first refusal to purchase the loan, receivables, or interests; or

3. the total circumstances indicate that the person is the lender, and the transaction is structured to avoid small loan regulation.

Under the bill, the following circumstances support the position that a person should be licensed as a small loan lender:

1. indemnifying, insuring, or protecting an exempt lender for any of the loan's costs or risks;

2. predominantly designing, controlling, or operating a small loan program; and

3. purporting to act as an agent, service provider, or in another capacity for an exempt lender in Connecticut and directly acting as a lender elsewhere.

§ 6 — RETAIL INSTALLMENT CONTRACTS

Increases the maximum value of retail installment or installment loan contracts for consumer goods and equipment to $75,000 and $25,000, respectively

The bill increases the maximum value of retail installment or installment loan contracts for consumer goods (including motor vehicles) and equipment. Currently, the maximum value is $50,000 for consumer goods and $16,000 for equipment. The bill increases these amounts to $75,000 and $25,000 respectively, and by raising these limits, the law will apply to more consumers.

The bill also makes a conforming change to the definition of "sales finance company" to include any person engaging in Connecticut in the business of receiving payments (principal and interest) from a retail buyer under a retail installment or installment loan contract. This is the existing definition for these companies under their licensing statutes (see CGS § 36a-535).

§ 7 — GUARANTEED ASSET PROTECTION WAIVER

Allows borrowers to cancel a GAP waiver and receive a pro-rata refund

The bill requires "guaranteed asset protection" (GAP) waivers to be cancellable and, if cancelled, provide a pro rata refund to the borrower from the creditor, holder, administrator, or other authorized party, as applicable. The refund is (1) available only if no benefits were provided under the waiver and (2) based on monthly increments, starting on the 15th day of each month.

Under the bill, if a vehicle is fully paid for under its retail installment or installment loan contract or repossessed, the creditor, holder, administrator, or other authorized party must provide (or have the administrator or retail seller provide) the borrower with any required refund or apply a credit to the borrower's outstanding balance, as

applicable. This must be done within 30 days of the event and without a borrower's request to cancel the waiver.

A GAP waiver is generally a debt cancellation or waiver agreement of the remaining loan balance, absolving someone from paying the difference between what is owed on a motor vehicle and what the vehicle is worth. Specifically, under the bill, it is:

1. a contractual agreement that is part of, or an addendum to, a retail installment or installment loan contract in which a creditor agrees to cancel or waive some or all of the amount a borrower owes if there is a total loss of a motor vehicle from damage or theft or

2. an excess wear and use waiver contractual agreement that is part of, or an addendum to, a motor vehicle lease agreement in which a creditor agrees to cancel or waive all or part of the amount a borrower owes from excessive wear and use of a leased vehicle, such as from excess mileage.

The bill allows these waivers to (1) be made with or without a separate charge and (2) provide borrowers with a credit toward purchasing a replacement vehicle, also with or without a separate charge. It specifies that these waivers are not considered insurance for purposes of refund requirements after a repossession.

The bill's provisions apply to agreements entered into on or after October 1, 2023.

§ 8 — ELECTRONIC CALL REPORT FILINGS

Eliminates the requirement for public deposit reports to be notarized if they are submitted electronically to DOB

The bill allows qualified public depositories (i.e., institutions allowed to hold public funds such as banks and credit unions) to submit their written reports to DOB on each call report date without notarization (i.e., certified under oath) if they are submitted electronically. Current law requires notarization of all these reports.

EFFECTIVE DATE: July 1, 2023

§§ 9 & 10 — PROHIBITED ACTS OF CERTAIN MORTGAGE LICENSEES

Prohibits certain licensed mortgage professionals from (1) using an unlicensed lead generator unless the lead generator is exempt from licensure or (2) helping a lead generator conduct business without a valid license

The bill prohibits licensed mortgage lenders, correspondent lenders, brokers, and loan originators from using the services of a lead generator unless the lead generator is licensed or exempt from licensure (e.g., a federally insured bank or credit union or a subsidiary of the institution). It also prohibits licensed mortgage professionals from assisting or aiding and abetting a person in the conduct of lead generator business without a license.

A lead generator is a person who, for or with the expectation of compensation or gain (1) sells, assigns, or transfers information that identifies a potential residential mortgage loan customer (a lead); (2) generates or adds to a lead for another person; or (3) directs a consumer to a person for a residential mortgage loan through marketing services (CGS § 36a-485).

§ 11 — MORTGAGE SERVICER SUPERVISORS

Eliminates the requirement that certain supervisors of mortgage servicers generally live within 100 miles of a branch office

Under current law, a mortgage servicer must have a qualified individual for its main office and a branch manager for each branch, each of whom must live within 100 miles of the respective location or show that he or she is otherwise able to provide full-time, in person supervision. The bill eliminates this geographic and alternative full-time, in person requirement.

§ 12 — TECHNICAL CHANGE

Makes a technical change to a banking statute

The bill makes a technical change to a banking statute.

§ 13 — DEPOSIT ACCOUNT CLOSURE NOTICE

Expands the circumstances under which a financial institution does not need to provide notice of a deposit account's closure

By law, financial institutions must generally send notices to customers within 10 days after they close a customer's account, which must include the reason for closure.

The bill expands the circumstances under which a financial institution does not need to provide this notice. Currently, it is not required if, among other things, the institution (1) believes the account is being used for illegal or fraudulent activity, (2) learns that law enforcement is investigating activity involving the account, or (3) is prohibited by state or federal law from providing it. Under the bill, notice is also not required in the following circumstances:

1. the depositor, or the depositor's agent (e.g., estate representative), closes the account;

2. the institution closed the account after escheating its balance to the treasurer (i.e., the account is presumed abandoned);

3. a beneficiary or the institution closes the account after title to it vests in the beneficiary; or

4. the institution already notified the depositor that the account would be closed after a certain date and the reason for closure, and that date has passed.

§ 14 — BASIC BANKING ACCOUNTS

Limits the required advertising and availability of basic bank accounts to banking institution branches and other offices that are located in Connecticut

By law, state and federally chartered financial institutions doing business in Connecticut must make a "basic banking account" available to Connecticut residents beginning July 1, 2023. Among other things, these accounts have low minimum initial deposit and balance requirements and are restricted in their permissible fees.

The bill limits the required availability of basic banking accounts to branches or other offices in the state and correspondingly makes the advertising (i.e., certain posted information) of these accounts only required at locations in Connecticut.

EFFECTIVE DATE: July 1, 2023

§§ 15-23 — CAPITAL AND SURPLUS REQUIREMENTS

Generally applies a "capital and surplus" calculation to certain investment decision making of Connecticut banks (i.e., liabilities of borrowers, debt and equity securities, debt and equity mutual funds, social purpose investments, savings banks life insurance, mortgage lending, and real estate for the banks' business)

Definition — Capital and Surplus

Under the bill, "capital and surplus" is as defined by the Office of the Comptroller of the Currency (OCC) regulations, which apply to federally chartered banks.

For qualifying community banking organizations that chose to use the OCC community bank leverage ratio framework, capital and surplus is the bank's (1) tier 1 capital (e.g., common voting stock and retained earnings) and (2) allowance for loan and lease losses or adjusted allowances for credit losses reported in its call report. (A bank leverage ratio shows financial position regarding debt and capital or assets.)

And for all other banks, it is a bank's (1) tier 1 and tier 2 (e.g., loan and lease loss allowance, qualifying preferred stock, or subordinated debt) capital, calculated under OCC risk-based capital standards, that it reports in its call report and (2) allowance for loan or lease losses or adjusted allowances for credit losses not included in the tier 2 capital, that it uses to calculate risk-based capital in the call report.

Applying Capital and Surplus

The bill generally applies the use of capital and surplus, instead of equity capital and reserves for loan and lease losses, to its calculations for holding the liabilities of any one obligor (debtor), debt securities and debt mutual funds, equity securities and equity mutual funds, and social purpose investments (but see exceptions, below).

For example, under the bill, the total liabilities of any one obligor that are not fully secured to a Connecticut bank (not counting any investment in the obligor's investment securities), cannot exceed 15% of the bank's capital and surplus, instead of equity capital and reserves for

loan and lease losses, at the time of the obligation. Existing law, unchanged by the bill, imposes various percentage thresholds for determining the ability to hold the above investments.

The bill also prohibits a savings bank from investing more than 5% of its capital and surplus, rather than equity capital, in stocks, obligations, or other securities of The Savings Bank Life Insurance Company.

Capital and Surplus Exception Choice. The bill allows a Connecticut bank, by January 1, 2024, and if it notifies the DOB commissioner of this choice by that date, to choose to use equity capital and adjusted allowances for credit losses (instead of capital and surplus) for the following calculations related to the liability of any one obligor:

1. limits on the liability;
2. limits on obligations as an endorser or guarantor of negotiable or nonnegotiable installment consumer paper, which have an agreement to repurchase upon default;
3. limits on the amount of bills of exchange the bank may accept;
4. determining exceptions from obligation limits; and
5. limits on obligations secured by first mortgages on real estate.

The bill allows a bank that makes the above choice to subsequently use capital and surplus for the calculations if it notifies the DOB commissioner in writing that it has chosen to do so. But it also allows the bank, after choosing to use capital and surplus, to use equity capital and adjusted allowances for credit losses for the same purposes, without further notice to the commissioner (§ 19).

For investments in debt securities and debt mutual funds, the bill allows a Connecticut bank to use equity capital and adjusted allowances for credit losses to calculate limits on the total amount of debt securities and debt mutual funds of any one maker, obligor, or issuer purchased or held by the bank or for the bank's account (§ 20). It similarly allows a bank to do this to calculate the limit on the total amount of (1) equity

securities and equity mutual funds of any one issuer purchased or held by the bank or for the bank's account (§ 21) or (2) securities that are considered social purpose investments of any one maker, obligor, or issuer held by the bank or for the bank's account (§ 22). These choices are also subject to the January 1, 2024, election and DOB notification requirements described above for single obligor investments.

Lending Decisions: Loan Policies, Mortgage Issuance, and Bank Property

The bill requires Connecticut banks to use capital and surplus, rather than total capital and reserves for loan and lease losses, when deciding standards for material loans (i.e., standards based on the size of the loan in relation to the bank's capacity and risks) (§ 17). It correspondingly applies capital and surplus, rather than equity capital and reserves for loan and lease losses, to decision making for investing in mortgage loans (§ 18).

The bill similarly applies capital and surplus to the calculation of whether a Connecticut bank may (1) without DOB commissioner approval, change or improve real estate used for the bank's business or (2) purchase adjoining real estate (§ 16).

§ 24 — CREDIT UNION MEMBERSHIP

Expands Connecticut credit unions' eligible membership by allowing them to (1) have a field of membership that includes both a common bond and a geographic community and (2) add associations, beyond those of members

The bill expands Connecticut credit unions' eligible membership. Under current law, the membership of Connecticut credit unions is limited to either common bonds or people in a well-defined community, neighborhood, or rural district. The bill (1) allows credit unions to have a field of membership that includes both a common bond and a geographic community and (2) broadens the scope of associations that are eligible common bonds beyond those of existing credit union members.

Under the bill, the new associations eligible for credit union membership must exist for a purpose other than expanding membership. The bill requires the DOB commissioner, when deciding

whether to approve an association for a credit union's field of membership, to consider the public interest and benefit from inclusion. And when deciding if an association was formed to serve a purpose other than membership expansion, he must consider all circumstances, including at least the following:

1. opportunities for members to participate in furthering the association's goals;

2. association membership eligibility requirements, including if eligibility is limited to the association's stated purpose, and the maintenance of a membership list;

3. association membership dues and member voting rights;

4. association sponsored activities and the number of meetings and member participation on topics concerning the association's core purposes; and

5. the amount of separation between the credit union and the association.

Background — Common Bond Memberships

By law, a "single common bond membership" is a field of membership consisting of one group that has a common bond of occupation or association (e.g., employees of a company). A "multiple common bond membership" consists of more than one group that has a common bond of occupation or association within each group (CGS § 36a-435b).

§ 25 — BANK MERGER OMBUDSMAN

Requires the DOB commissioner to designate a bank merger ombudsman, within available appropriations, to help people with accounts at financial institutions when there are issues about the institution's merger with another financial institution

Designation and Responsibilities

The bill requires the DOB commissioner, within available appropriations, to designate a bank merger ombudsman within the department. Under the bill, the ombudsman must, in consultation with the commissioner, do the following:

1. timely help financial institution account holders with issues related to a merger with another financial institution and disseminate information about the ombudsman's availability to help;

2. receive and review complaints from account holders at a financial institution that merged with another financial institution and investigate the complaints if one of the institutions is a Connecticut bank or Connecticut credit union;

3. review information related to complaints from account holders who provide written consent to the review and help account holders who submit complaints to understand their associated rights and responsibilities;

4. communicate complaints about a financial institution after its merger to its primary regulator if it is an out-of-state bank, out-of-state credit union, or a federal credit union;

5. compile and analyze data about the complaints it receives;

6. provide information to the public, state agencies, legislators, and others about the problems and concerns of people who submit complaints and recommend ways to resolve them; and

7. analyze and monitor the development and implementation of laws, regulations, and policies concerning financial institutions and their mergers and recommend any necessary changes to them.

The bill also requires the ombudsman to take any other necessary actions to fulfill the position's duties. By law, "financial institutions" include banks, Connecticut and federal credit unions, and out-of-state banks and credit unions with a branch or office, respectively, in the state (CGS § 36a-41).

Annual Report

By January 1, 2025, the bill requires the ombudsman to begin

annually reporting to the banking commissioner (1) information related to implementing the bill's requirements and (2) any additional steps DOB needs to take to address bank merger complaints.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute
Yea 12 Nay 0 (03/07/2023)