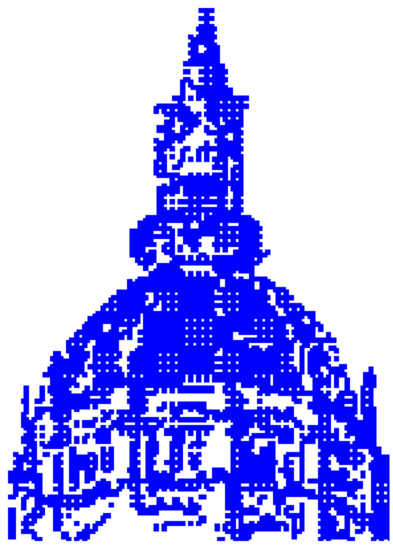
2001

ACTS AFFECTING

BANKS

Office of Legislative Research



Prepared for members of the

Connecticut General Assembly

by
Jennifer Gelb, Research Attorney

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NOTICE TO READERS

This report provides brief summaries of the 2001 public acts affecting banks. Not all provisions of the acts are included and not all the acts listed have been signed by the governor. Readers are encouraged to obtain the full text of acts that interest them from the Connecticut State Library or the House Clerk's office. *Highlights of the Revised FY 02 Budget and Statutory Formula Grants to Municipalities* is available from the Office of Fiscal Analysis. Complete summaries of all public acts passed during the 2001 session will be available in early fall when OLR's Public Act Summary book is published.

CONTENTS

BANKING DEPARTMENT

Connecticut Uniform Securities Act and Banking Department Notices

This act applies the same provisions that govern withdrawal from registration as broker-dealers, investment advisers, and agents to withdrawal of applications for registration. It allows the banking commissioner to accelerate the withdrawal's effective date unless a denial is pending when the application is filed. It amends the definitions of "broker-dealer" and "investment adviser" to conform to federal securities law.

The act allows the commissioner to accept a consent order from anyone he notifies after finding that the person violated a provision of the Uniform Securities Act. It expands delivery options for notices and orders pursuant to the act to include any express delivery carrier providing a dated delivery receipt. It also requires parties sending notices and orders by registered mail to request a return receipt where none was previously required. (**PA 01-48**, *effective October 1, 2001)*

BANKS AND CREDIT UNIONS

Identification Required for Check Cashing

This act requires the main and branch offices of Connecticut and federal banks to cash checks for up to $500 that are payable at the bank or are drawn on an account held at the bank. The bank's duty is conditioned on (1) the check being presented by the person listed as the payee on the check, (2) there being enough money in the account to pay the check, and (3) the person cashing the check providing sufficient identification and such other information as the bank requires for reporting and recordkeeping. The act prohibits a bank from requiring more than two forms of identification when the customer provides (1) a U.S. passport, (2) a driver's license, or (3) an identity card issued by the Department of Motor Vehicles.

The act allows a bank to disregard these provisions and refuse to pay a check if it determines such action is necessary to protect its customer or itself against potential fraud or loss or to otherwise comply with applicable law. (**PA 01-175**, *effective October 1, 2001*)

Bank Transactions

This act changes and reorganizes bank transaction fees and amends the requirements for bank examination by accountants. It addresses establishing, converting, and closing Connecticut banks and branches, including conversion to an uninsured bank. It replaces an outdated provision for troubled banks with new powers for the banking commissioner when banks are in danger of insolvency. (**PA 01-183**, *effective upon passage, except the section on transaction fees takes effect July 1, 2001*)

TRUSTS AND FIDUCIARIES

Credit Union Trusts

This act allows people to establish trusts at all Connecticut and federal credit unions by extending existing provisions for establishing trusts. Under prior law, these provisions applied only to banks. The act broadens the scope of trusts to allow a person to create a trust in a credit union ("share account") as well as a bank ("deposit account").

By law, if the named beneficiary of the trust is alive when the depositor dies, the depositor's death terminates the trust, unless the document creating the trust says otherwise. Under the act, the beneficiary gets the title to the share account, unless he is ineligible to become a member of the credit union. A beneficiary who is not or cannot become a member of the credit union can take the money to a different financial institution.

The act applies the provisions relating to establishment of a trust and accompanying writings to all share accounts established at Connecticut and federal credit unions (1) on or after October 1, 2001 and (2) before October 1, 2001 if the depositor at any time provides a writing specifying the terms of the trust. The credit union is protected in paying out money from the trust and has no duty to ask about the funds' intended use. This provision applies to all share accounts, regardless of when they were established. (**PA 01-6**, *effective October 1, 2001)*

Community Reinvestment by Community Credit Unions

This act subjects community credit unions to community reinvestment requirements similar to those that already apply to banks. It defines a "community credit union" as a Connecticut-chartered credit union with at least $10 million in assets and a membership limited to people in a well-defined geographic community, neighborhood, or rural area. Smaller credit unions and those whose members work for the same employer or belong to the same association or other group not based on geography are exempt. By law, credit unions are owned by their members and can only serve their members.

The act requires community credit unions to undergo periodic assessments of their efforts to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods. The act requires the banking commissioner annually to provide the state treasurer with a list of community credit unions he has rated "needs to improve" or "substantial noncompliance" in meeting community credit needs. Under the act, credit unions included on such lists cannot receive state, municipal, or trust fund deposits. (**PA 01-9**, *effective July 1, 2001)*

Removal of a Fiduciary

This act allows the probate court to remove a fiduciary if:

1. lack of cooperation among co-fiduciaries substantially impairs administration of the estate;
2. the court determines that removal best serves the beneficiaries' interests;
3. there has been a substantial change of circumstances; or all beneficiaries request removal and the court finds

that (a) removal best serves their interests and is consistent with the material purposes of the governing instrument and (b) a suitable co-fiduciary or successor fiduciary is available.

The act prohibits a probate court from removing (1) a successor corporate fiduciary in a way that discriminates against state or national banks or (2) a consolidated state bank, national banking association, or any "receiving state bank or national banking association" solely because it is a successor fiduciary. A "successor fiduciary" is a corporate fiduciary (often a bank) that is substituted for another corporate fiduciary because of (1) the merger or consolidation of corporate fiduciaries, (2) the acquisition of the stock or assets of a corporate fiduciary, or (3) a corporate fiduciary's transfer of all or a part of its trust and fiduciary business to another corporate fiduciary. (**PA 01-114**, *effective October 1, 2001*)

Beneficiary Interests in Trust Matters

The act authorizes people in trust-related matters to represent the interests of and bind minors, an incapacitated or unborn people, or people whose identity or location are unknown and not reasonably ascertainable if: (1) they have a substantially identical interest with respect to the particular question or dispute (2) there is no conflict of interest between the representative and the person being represented, and (3) they are not otherwise represented.

The act specifies circumstances under which these people's interests can be represented by conservators, guardians, agents, trustees, executors, administrators, and parents. (**PA 01-69**, *effective October 1, 2001*)

Principal and Income Act

This act makes changes regarding fiduciary decisions under the Connecticut Principal and Income Act (CPIA). It prohibits a court from changing a fiduciary's decision to exercise a discretionary power under the CPIA unless it finds the fiduciary abused its discretion. It prohibits a court from finding an abuse of discretion merely because it would have come to a different conclusion or not exercised its judgment at all.

The act provides rules for the court to remedy a fiduciary's abuse of discretion and a procedure for a fiduciary to ask the court to determine whether a proposed course of action would constitute an abuse. (**PA 01-68**, *effective October 1, 2001*)

MORTGAGES

Abusive Home Loan Lending Practices

This act requires lenders to make certain disclosures to prospective borrowers seeking high-cost home loans, including the interest rate and the consequences of mortgaging a home. It prohibits lenders from including certain loan provisions or from taking certain actions with respect to high-cost home loans, such as charging unwarranted or excessive fees or providing incomplete information. It also imposes conditions on a lender’s ability to sell credit insurance to a borrower. It creates penalties for lenders who violate its provisions.

The act prohibits lenders from charging a fee for the first payoff statement requested each year except when it is delivered on an expedited basis pursuant to an agreement with the borrower. (**PA 01-34**, *effective October 1, 2001*)

Mortgage Assignment

This act specifies that whenever a mortgage assignment or other transfer of a mortgage interest is recorded on the land records, the town clerk must enter the property owner's name in the grantor index for the transaction. (**PA 01-74**, *effective October 1, 2001*)

MONEY TRANSMISSION

This act expands license application requirements for people and businesses wishing to engage in money transmission by requiring information on additional shareholders and on the applicants' legal and criminal histories. It also redirects the proceeds of bonds and investments held by the licensee as surety. It establishes new guidelines for the banking commissioner to use when examining licensees and their agents, as well as for investigating and revoking licenses.

The act changes the name of the law governing money transmission and specifies banking entities that are exempt from its provisions. (**PA 01-56**, *effective October 1, 2001*)

FINANCIAL PRIVACY

This act amends the statutes regarding privacy of financial records to comply with the provisions of the federal Gramm-Leach-Bliley Financial Modernization Act of 1999. It repeals obsolete provisions and makes consumer protection laws applicable to bank branches' disclosure of financial records. (**PA 01-76**, *effective July 1, 2001*)

OTHER COMMITTEES' BANKING-RELATED ACTS

Stolen or Seized Currency

This act eliminates law enforcement agencies' authority to deposit seized cash in a safe deposit box in a state bank. Instead, it requires them to keep or return seized, stolen cash, following existing procedures governing seized property. It also creates a procedure for keeping, banking, or returning seized cash that was not stolen. (**PA 01-104**, *effective October 1, 2001*)

Execution Upon Funds in Bank Accounts That Are Exempt from Execution

This act requires banks, when served with court-ordered judgments by creditors, to (1) leave $800 in the debtor's account (or the entire account balance, if it contains less than $800) if "readily identifiable" exempt federal veterans' or Social Security benefits were recently paid in by electronic direct deposit and (2) give the debtor access to the money. Banks can depart from this requirement if directed by any other law or by court order, and creditors can obtain court hearings if they reasonably believe that nonexempt funds have been withheld.

The act specifies that the requirement does not alter (1) the exempt status of funds that federal or state laws exempt from execution, (2) the account holder's right to claim exemptions, or (3) the bank's other rights or obligations with respect to the funds in these accounts. It permits a bank to notify the creditor that it has left funds in the debtor's account and makes this notice prima facie evidence at court hearings that the funds are exempt. (**PA 01-196**, *effective January 1, 2002*)

Applications for Financial Assistance from Quasi-Public Agencies

Under this act, quasi-public agencies must require anyone who requests financial assistance from them to sign, under statutory penalty of false statement, the application or other document the agencies use to base their decisions. The penalty is imprisonment for up to one year, a maximum $2,000 fine, or both. A person is subject to the penalty if he:

1. intentionally makes a false statement under oath or on a form warning him that these statements are punishable,
2. intends the statement to mislead a public servant performing his duties, and
3. does not believe that the statement is true.

Quasi-public agencies can impose the requirement on people who complete any application, agreement, financial statement, certificate, or other document they send to agencies regarding loans, mortgages, guarantees, investments, grants, leases, tax relief, bond financing, or other types of credit or financial assistance. The act applies to the following agencies: Connecticut Development Authority, Connecticut Innovations, Inc., Connecticut Housing Authority, Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Resource Recovery Authority, Connecticut Hazardous Waste Management Service, Connecticut Coastline Port Authority, Capital City Economic Development Authority, and the Connecticut Lottery Corporation. (**PA 01-184**, *effective October 1, 2001*)

Child Support Enforcement System

This act requires private child support collection agencies to be licensed by the Banking Department as consumer collection agencies, gives the banking commissioner regulatory authority over them, and limits the fees they can charge their clients to 25% of the overdue child support collected. It also requires them to enter into a written agreement with their client and make certain disclosures in the agreement. (**PA 01-207**, *effective July 1, 2001*)

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