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REGULATE CERTAIN FINANCIAL SERVICES

House Bills 5208-5213
Sponsor: Rep. William R. Keith
Committee: Corporations and Finance

Complete to 1-19-88

A SUMMARY OF HOUSE BILLS 5208-5213 AS INTRODUCED 12-9-87

House Bill 5208 would create the Consumer Financial Services Act which would regulate certain consumer financial services provided by financial institutions. The bill would require a person to be licensed under this or an appropriate financial licensing act in order to engage in any activity regulated by the financial licensing acts. Generally, however, state and federal banks, credit unions and savings and loans would be exempt from the bill's requirements.

The bill would define a "class I" and "class II" license and require that applications for either of these be made in writing and under oath to the commissioner of the Financial Institutions Bureau (FIB). A class I license would authorize the licensee to engage in all of the activities permitted under the Regulatory Loan Act, Public Act 125 of 1981 (which governs the regulation of secondary mortgage loans), the Motor Vehicle Sales Finance Act, Public Act 379 of 1984 (which governs the regulation of credit card transactions), or the Sale of Checks Act. A class II license would authorize the licensee to engage in all of the activities permitted by a class I license, except those allowed under the Sale of Checks Act. Each applicant would be required to state on the application the full name, business address, and residence of the proprietor (if the applicant is an individual), of each member in a partnership or association, or of a corporation and each of its officers, directors, and stockholders. The bill would permit the commissioner to exempt publicly held corporations from the requirements of providing information regarding stockholders. License application and other fees would be as follows:

- $800 for a class I license;
- $500 for a class II license;
- an investigation fee of $500 unless the applicant has 1 or more licenses under the financial licensing acts, in which case the investigation fee would be $100.

The bill would also require an applicant to give a "reasonably satisfactory" financial statement to the commissioner showing that the applicant's net worth exceeded $100,000 for those applying for a class I license or $50,000 for those applying for a class II license. If the applicant deposited with the commissioner bonds, notes, debentures, or other obligations of the United States, of this state, or of a local unit of government in the state, the bill would require that the financial statement of a class I or class II applicant would have to show a net worth of $200,000 or $100,000, respectively. In addition, the bill would require a class I applicant to file a surety bond—upon request by the commissioner—in the principal amount of $125,000, and an additional amount of $3,000 for each office or agency of the applicant engaged in the sale of checks. However, the total amount of a required surety bond could not exceed $250,000. A class II applicant would be required to file a surety bond in the principal amount of $25,000. The bill would allow an applicant to deposit with the commissioner, instead of surety bonds, bonds, notes, debentures, or other obligations of the United States, of this state, or of any local unit of government in the state.

The bill would require the commissioner, upon receipt of a financial services application, to investigate the applicant. If the commissioner is satisfied with the applicant's experience and competence, the commissioner would issue the applicant a license to engage in all the activities allowed under the bill. A license issued or renewed under the bill would expire on December 31 of each year. To renew a license, the bill would require a class I or II licensee to pay either $800 or $500, respectively, no later than December 15. A licensee would be allowed to change its name or place of business to another location within the state, upon written permission of the commissioner, for a fee of $50 for each license certificate amendment. The bill would allow a licensed operator to operate only one place of business under the same license.

The bill would require licensees to comply with all of the requirements of the financial licensing acts, but would allow for exemptions from various procedures within these acts which, instead, would be regulated under this bill.

The bill would stipulate that a class I or II license could not be denied, suspended, or revoked except on not less than ten days' written notice to the applicant or licensee indicating the reasons for the denial, suspension, or revocation. The applicant or licensee, within five days after receipt of the notice, could make a written demand for a hearing. The commissioner would be required to hear and determine the matter "with reasonable promptness." The applicant or licensee, if aggrieved by the verdict, could appeal the order of the commissioner to the circuit court within 30 days from the date of the order, where the aggrieved party would be entitled to judicial review. The bill would permit the commissioner to deny, suspend, revoke, or refuse to renew a license for a number of reasons, most of which pertain to an applicant's or licensee's non-compliance with the rules and procedures stated within the bill. The bill would grant the commissioner authority to investigate an applicant or licensee and would grant the commissioner the power to subpoena witnesses and documents, papers, books, and any other evidence in any matter over which the commissioner has jurisdiction. If the commissioner found that a licensee was engaging in an unsafe or unsound practice, the commissioner could issue a cease and desist order, after giving notice and holding a hearing.

The bill would require that a licensee be examined at least once a year. The bill also would require the licensee to pay an examination fee, which would be determined by the commissioner and could not be less than $20 per hour or more than $40 per hour. The examination fee would be due upon receipt of an invoice by the licensee from the commissioner. A licensee, however, would not be required

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to pay for more than one required examination within a calendar year. However, the bill would grant the commissioner authority to investigate a licensee at any time and charge the licensee an amount sufficient to cover the cost of the investigation, not less than $20 per hour or more than $40 per hour. The commissioner could accept an annual report and an audit of a licensee by a certified public accountant instead of conducting an examination.

The bill would stipulate that all fees and expenses provided for in the bill would be paid into the state treasury, to be credited to the Financial Institutions Bureau (FIB).

The bill would require a licensee to maintain records relating to all transactions made in accordance with the bill, to be made available to the commissioner upon request. The bill would require these records to be made available for not less than 25 months after making the final entry on any loan recorded in the record. A licensee could keep records by electronic data processing. A licensee would be required to submit an annual report on or before February 15 of each year stating the licensee's activities for the previous calendar year; failure to do so would result in a fine of $10 for each day beyond the specified filing date that the report had not been submitted.

The bill would grant the commissioner the authority to appoint a conservator or apply to the appropriate circuit court for a receiver for the licensee who could take possession of books, records, and assets of the licensee and could take any necessary action to conserve the assets of, or ensure payment by, the licensee to the state. All expenses accrued in the process of commissioning a conservator would be paid out of the assets of the licensee, upon the approval of the commissioner. The commissioner, if satisfied it would be done safely and in the best interest of the public, could terminate the receivership and permit the licensee to resume transaction of its business in accordance with the bill. The bill would prohibit a licensed operator from engaging in various activities, including real estate and pawn brokering.

The commissioner would be required to promulgate rules that are necessary for the enforcement of the bill.

A county prosecutor, the attorney general, or any person could bring an action to obtain a declaratory judgment or an injunction against a person in violation of the act, and recover the respective damages as provided in the bill.

House Bill 5209 would amend the Regulatory Loan Act (MCL 493.1) to exempt a person licensed under House Bill 5208 from the requirements in the act.

House Bill 5210 would amend the Motor Vehicle Sales Finance Act (MCL 492.103) to exempt a person licensed under House Bill 5208 from the requirements in the act.

House Bill 5211 would amend Public Act 125 of 1981 (MCL 493.52) to exempt a person licensed under House Bill 5208 from the requirements stipulated in this act.

House Bill 5212 would amend Public Act 379 of 1984 (MCL 493.102) to exempt a person licensed under House Bill 5208 from the requirements stipulated in this act.

House Bill 5213 would amend the Sales of Checks Act (MCL 487.903) to exempt a person licensed under House Bill 5208 from the requirements found in this act.

House Bill 5208 is tie-barred to House Bills 5209, 5210, 5211, 5212, and 5213 and each of these bills is tie-barred to House Bill 5208.