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BILL ANALYSIS

JUL 06 1988

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bills 5208, 5209, 5210, 5211, 5212, 5213, and 5364 (all as reported with amendments)

Sponsor: Representative William R. Keith

House Committee: Corporations and Finance

Senate Committee: Finance

Date Completed: 4-28-88

## RATIONALE

A number of financial services currently are regulated under several different acts. These acts govern the licensing and regulation of "non-depository" financial institutions (institutions other than State and Federal banks, credit unions, and savings and loans) that offer various financial services, including making small business loans, financing motor vehicle loans, selling checks, servicing primary and secondary mortgage loans, and issuing credit cards. It is not uncommon for a financial service provider to be licensed under most, if not all, of these various financial services acts. Because each act requires that a proprietor keep records pertaining to the company's activities, which often could mean providing records for up to six separate licenses, some feel all the acts should be combined into one all-inclusive, "omnibus" licensing act, with one set of fees and one set of rules.

## CONTENT

House Bill 5208 would create the "Consumer Financial Services Act" to regulate certain consumer financial services provided by financial institutions. House Bills 5209 through 5213 and House Bill 5364 would amend various acts that require licensing of financial institutions to allow financial institutions to obtain a license under the Act created in House Bill 5208. Following is a detailed description of the bills.

### House Bill 5208

The bill would require a "person" (an individual, corporation, partnership, association, or other legal entity) to be licensed under the proposed Consumer Financial Services Act, or an appropriate financial licensing act, in order to engage in activities regulated by the various financial institutions licensing acts. A person licensed under the bill would be exempt from the requirements of the other applicable financial licensing acts regulating application, licensing, payment of fees, filing surety bonds, record-keeping, and license denial, suspension, or revocation. State and Federal banks, credit unions, and savings and loans generally would be exempt from the bill's requirements.

The bill would define "class I" and "class II" licenses and require that applications for either 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), the Sale of Checks Act, or the Mortgage Brokers, Lenders and

Servicers Licensing Act. A class II licensee could engage in all of the activities permitted by a class I license, except those allowed under the Sale of Checks Act and the Mortgage Brokers, Lenders and Servicers Licensing Act.

Each applicant would be required to state on the application the full name, business address, and residence of the proprietor (if the applicant were 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 investigation fees would be \$800 for a class I license, \$500 for a class II license, and \$500 for an investigation unless the applicant had one or more licenses under the other financial licensing acts, in which case the investigation fee would be \$100.

The bill also would 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 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. 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. A class II applicant could deposit with the Commissioner, instead of a surety bond, bonds, notes, debentures, or other obligations of the United States, of this State, or of any local unit of government in the State.

The Commissioner, upon receipt of a financial services application, would have to investigate the applicant. If the Commissioner were satisfied with the applicant's experience and competence, the Commissioner would have to 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

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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. A licensed operator could operate only one place of business under the same license.

A class I or II license could not be denied, suspended, or revoked except with at least 10 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. The Commissioner could deny, suspend, revoke, or refuse to renew a license for a licensee's noncompliance with the rules and procedures stated in the bill. The Commissioner could investigate an applicant or licensee, and subpoena witnesses, 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.

A licensee would have to be examined at least once a year and 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. The Commissioner could also 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 provides that all fees and expenses would have to be paid to the State Treasury, to be credited to the FIB and used only for the operation of the FIB.

A licensee would be required to maintain records relating to all transactions made in accordance with the bill, to be made available to the Commissioner upon request. These records would have 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 Commissioner could appoint a conservator or apply to the appropriate circuit court for a receiver for a licensee, who could take possession of books, records, and assets of the licensee and could take any necessary action to conserve the licensee's assets 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 that 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 were 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 proposed Act, and recover damages as provided in the bill.

#### **House Bill 5209**

The bill would amend the Regulatory Loan Act to allow a person to conduct business as licensed under the Act or under the Consumer Financial Services Act created by House Bill 5208.

MCL 493.1

#### **House Bill 5210**

The bill would amend the Motor Vehicle Sales Finance Act to exempt a person licensed under House Bill 5208 from the licensure requirements of the Act.

MCL 492.103

#### **House Bill 5211**

The bill would amend Public Act 125 of 1981 to exempt a person licensed under House Bill 5208 from the licensure requirements of the Act.

MCL 493.52

#### **House Bill 5212**

The bill would amend Public Act 379 of 1984 to exempt a person licensed under House Bill 5208 from the licensure requirements of the Act.

MCL 493.102

#### **House Bill 5213**

The bill would amend the Sales of Checks Act to exempt a person licensed under House Bill 5208 from the licensure requirements of the Act.

MCL 487.903

#### **House Bill 5364**

The bill would amend the Mortgage Brokers, Lenders, and Servicers Licensing Act to exempt a person licensed under House Bill 5208 from the licensure requirements of the Act.

MCL 445.1652

The bills would take effect September 1, 1988.

House Bill 5208 is tie-barred to House Bills 5209, 5210, 5211, 5212, and 5213, and 5364. Each of these bills is tie-barred to House Bill 5208.

### ***SENATE COMMITTEE ACTION***

The Senate Finance Committee adopted an amendment to each bill to provide that the package of bills would take effect September 1, 1988. The Committee also adopted an amendment to tie-bar House Bill 5208 to House Bill 5364.

### ***FISCAL IMPACT***

The bills would have an indeterminate fiscal impact on State and local government. The bills would lower the operating costs of the FIB due to increased efficiency; however, revenues collected under the bills would also be lower. The FIB has attempted to offset the reduced costs with a fee structure that would provide equally reduced revenues. Whether the reduced cost and revenues would offset each other cannot be determined at this time.

**MORE**

## **ARGUMENTS**

### ***Supporting Argument***

Currently, the FIB regulates financial services provided by non-depository financial institutions under a separate act for each particular service provided. Often, however, a firm may be licensed to perform financial services in most or all of these different areas; in those cases, the licensee is required to obtain a single license for each of these separate activities, with the resulting fees and paperwork. Since many of the acts carry similar guidelines and fees, why not combine all these regulations and fees into one all-inclusive act? Not only would these bills reduce the cumbersome process of keeping separate records for each license held by a licensee, they could encourage more entrepreneurs, from inside and outside the State, to open financial service firms in Michigan, which would result in increased business activity. For a firm that wished to offer most or all of these services, the package of bills would provide rules and fees which would encompass all the activities covered under each of the separate financial service acts, but would include only one annual report. A firm that wished to provide a limited number of services could still be licensed under the appropriate act(s). Financial firms and the FIB could increase efficiency in record-keeping and examination procedures, respectively, saving both time and money.

### ***Opposing Argument***

Although the bills would increase the efficiency of both financial service firms and the FIB, and save both time and money, the fees proposed in House Bill 5208 would not necessarily be enough to match revenues the FIB currently may receive from combined fees under each of the individual acts. For instance, a financial service firm currently may offer up to six different services which are regulated under six different acts — each of which requires a separate fee for each license. Under present law, the fees — including examination fees — for the six licenses together could reach a combined total of nearly \$1,700. House Bill 5208, however, would make it possible for a financial service firm to provide all six of these services for up to \$500 less than is currently required.

**Response:** The fees prescribed in House Bill 5208 have been suggested by the FIB after studying current revenues and expenses as compared to those the Bureau believes would result under the package of bills. The lower fees prescribed in the bill would be offset by lower operating costs for the Bureau and projected increased revenue the Bureau believes would occur due to more firms becoming licensed under this "omnibus" bill package. Ultimately, the Bureau can only estimate the projected revenues and costs which would result from the bills; if these calculations are not correct — which could be determined only after testing the program in the open market — the Bureau could, at a later time, request the Legislature to alter the fees to the necessary amount.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.