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Senate Bill 668 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Banking and Financial Institutions

Date Completed: 11-22-99

RATIONALE

Various types of nondepository financial services are regulated by six separate statutes: the Mortgage Brokers, Lenders, and Servicers Licensing Act; the Regulatory Loan Act; the Secondary Mortgage Loan Act; the Motor Vehicle Sales Finance Act; the Sale of Checks Act; and Public Act 379 of 1984, which regulates certain credit card transactions and agreements. The Consumer Financial Services Act, however, allows nondepository financial services entities to obtain a single license to perform the full range of financial services covered by those Acts, rather than obtaining a license under each of the six Acts. Licensees under the Consumer Financial Services Act are subject to that Act's licensing, bonding, reporting, and enforcement provisions, and must comply with the applicable provisions of each of the six laws under which they provide services. It has been pointed out that while the Consumer Financial Services Act has not been revised since its enactment in 1988, several of the six licensing statutes have been amended. It has been suggested that the Consumer Financial Services Act be revised to reflect changes that have been made to the individual licensing laws, and to reflect recent changes in the business practices of financial services entities.

CONTENT

The bill would amend the Consumer Financial Services Act to do the following:

- **Change the annual licensing fee to an operating fee based upon the volume of business activity conducted.**
- **Eliminate a current provision that prohibits licensees from engaging in the business of a real estate broker or salesperson.**
- **Provide that if an application for a license were not approved, the Financial Institutions Bureau (FIB) would have to refund the prepaid annual operating fee. (The application fee would remain nonrefundable.)**
- **Eliminate a current provision that prohibits a licensee from operating a branch office**

without obtaining an additional license for each branch.

- **Allow the transfer of licenses, but prohibit the transfer or assignment of a license without the prior consent of the FIB Commissioner.**
- **Revise the Commissioner's enforcement powers, including his or her authority to suspend, revoke, or refuse to renew a license if a licensee fails to comply with various requirements.**
- **Establish specific procedures regarding actions the Commissioner could take against a licensee in the event of threat of financial loss or threat to the public welfare; and provide for administrative hearings and judicial review.**
- **Allow summary suspension of a license under certain conditions.**
- **Revise provisions regarding the appointment of a conservator.**
- **Revise the Act's record-keeping and reporting requirements.**

Licensure

The Act prohibits a person from engaging in an activity regulated by the Act or other financial licensing laws unless the person is licensed under the Act or another financial licensing law. (The other financial licensing laws are those under which a Class I licensee may engage in activities.) Under the Act, a person must obtain a Class I or Class II license. A Class I license authorizes the licensee to engage in all of the activities permitted under the Regulatory Loan Act; the Secondary Mortgage Loan Act; the Motor Vehicle Sales Finance Act; the Sale of Checks Act; the Mortgage Brokers, Lenders, and Servicers Licensing Act; and Public Act 379 of 1984. A Class II license authorizes all of the activities permitted under a Class I license except those permitted under the Sale of Checks Act or the Mortgage Brokers, Lenders, and Servicers Licensing Act. The bill further provides that a Class II licensee could not engage in loan servicing activities under

the Secondary Mortgage Loan Act.

The bill specifies that the Consumer Financial Services Act would apply to a person who engaged in any business activity, if the person were not licensed or were licensed under the Act or other financial licensing law and not otherwise exempt from applicable licensing or registration requirements. ("Business activity" would mean any activity regulated by any of the financial licensing laws governed by the Act.) If a person engaged in one or more business activities without the applicable licenses or registrations, the Commissioner would have the discretion to enforce the licensing or registration requirements under either the Act or the other financial licensing laws, but not both.

Currently, only one place of business may be operated under a license. The bill would eliminate this provision, and require a licensee to notify the Commissioner in writing before opening an additional place of business. An application that identified the locations at which the applicant, if approved, would conduct business activities subject to the Act would meet the notice requirement for those locations. A licensee that elected to cease engaging in business activities at a place of business would have to provide prior written notice to the Commissioner.

The Act provides that a license issued under the Act is not transferable or assignable. The bill would eliminate this provision, and provides instead that a license could not be transferred or assigned without the prior consent of the Commissioner. The bill provides that "transfer" would mean the sale, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee that was a corporation, or more than 25% of the ownership interest in a licensee that was a partnership or other legal entity.

Fees

Currently, the Commissioner must establish an annual schedule of fees sufficient to pay in full the FIB's costs of administering the Act. The bill would retain this provision, and would continue to require an application fee of \$500 to \$2,000, or \$100 to \$700 if an applicant had one or more licenses under the financial licensing laws. Otherwise, the bill would eliminate the current fee structure, which requires all applicants for a new or renewal Class I license to pay between \$800 and \$2,500 and all Class II applicants to pay between \$500 and \$2,000. The bill would provide instead for an annual operating fee that would be based upon the volume and types of activities conducted by the licensee during the previous calendar year. The bill would eliminate a provision that requires the payment of \$40 to \$70 per hour for an examiner involved in the examination or investigation of a licensee's records. The bill also would eliminate a requirement that a licensee be

examined at least annually.

The bill would require an application for a license to include a financial statement showing that the applicant's net worth exceeded \$1 million, if the applicant intended to engage in activities governed by Public Act 379 of 1984. The bill would retain a requirement that the financial statement of an applicant for a Class I license show a net worth that exceeds \$100,000, and for a Class II license, \$50,000. The bill specifies when and how net worth would have to be calculated. The following assets would have to be excluded in the computation of net worth:

- That portion of an applicant's assets pledged to secure obligations of any person other than the applicant.
- Receivables from officers or, in the case of a corporate applicant other than a publicly traded company, stockholders of the applicant or persons in which the applicant's officers or stockholders had an interest, except that construction loan receivables secured by mortgages from related companies would not be excluded.
- An amount in excess of the lower of the cost of market value of mortgage loans in foreclosure or real property acquired through foreclosure.
- An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates that was greater than the market value of the investment.
- Goodwill or value placed on insurance renewals or property management contract renewals or other similar intangible value.
- Organization costs.

Surety Bond

Currently, a Class I license applicant must file a surety bond (when required by the Commissioner) of \$125,000, plus \$3,000 for each officer but not to exceed a total of \$250,000. An applicant for a Class II license must file a surety bond (when required by the Commissioner) of \$25,000, or instead deposit with the Commissioner at least that amount in bonds, notes, or other obligations. The bill would eliminate these provisions and instead require any license applicant, when required by the Commissioner, to file a surety bond or letter of credit of at least \$500,000, which would have to remain for the duration of the licensure period. The surety bond or letter of credit would have to be in a form satisfactory to the Commissioner and would be payable upon demand by the Commissioner if he or she determined that the licensee was not conducting its activities as required under the Act, and the rules promulgated under the Act, and had failed to pay all money that became due to a person who was an installment buyer under the Motor Vehicle Sales Finance Act; Michigan residents

who purchased checks under the Sale of Checks Act; loan applicants, loan servicing customers, and borrowers under the Secondary Mortgage Loan Act or the Mortgage Brokers, Lenders, and Servicers Licensing Act; and the Commissioner.

The Commissioner would have to prioritize and pay claims against a bond or letter of credit filed with the Commissioner in a manner that, in his or her discretion, best protected the public interest. Claims could be filed against a licensee's bond or letter of credit only by the Commissioner on behalf of the FIB and of individuals having claims and who were, as applicable, the licensee's loan applicants, loan servicing customers, and borrowers under the Secondary Mortgage Loan Act or the Mortgage Brokers, Lenders, and Servicers Licensing Act; Michigan residents who purchased checks under the Sale of Checks Act; or persons who were installment buyers under the Motor Vehicle Sales Finance Act.

Claims filed with the Commissioner against a bond or letter of credit by a loan applicant, loan servicing customer, or borrower under the Secondary Mortgage Loan Act or the Mortgage Brokers, Lenders, and Servicers Licensing Act would involve, as applicable, only a mortgage loan, mortgage loan application, secondary mortgage loan, or secondary mortgage loan application secured or to be secured by real property used as a dwelling located in the State. The amount of the claim could not exceed actual fees paid by the claimant to the licensee in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee. Before payment of any claim, unless the Commissioner waived all or part of the right to priority of payment, the Commissioner would have to be paid in full for fines and fees due to the FIB and for expenses incurred in investigating the licensee and in distributing the proceeds of the bond or letter of credit. In the event that valid claims exceeded the amount of the bond or letter of credit, each claimant except the Commissioner would be entitled only to a pro rata amount of his or her valid claim.

Enforcement

License Suspension or Revocation. The Act provides that the Commissioner may suspend, revoke, or refuse to renew a license if he or she finds that the licensee has committed certain violations as listed. The bill also would allow the Commissioner to suspend, revoke, or refuse to renew a license if a licensee did the following:

- Failed to pay an annual operating fee or any associated late filing fees.
- Engaged in loan servicing activities, intentionally or as a result of gross or wanton negligence, that were not performed as required by law or by the terms of the servicing

contracts.

- Refused or failed, within a reasonable time, to furnish any information or make any report that was required by the Commissioner.

Cease and Desist Orders. The bill would revise the Act's provisions regarding cease and desist orders. Under the Act, if in the opinion of the Commissioner, a person or licensee is engaging in an unsafe or unsound practice or has violated a law or rule, the Commissioner may issue to the person or licensee a notice of charges regarding the unsafe and unsound practice or violation. The notice must contain a statement of the facts, and fix a time and place for a hearing, at which it will be determined whether an order to cease and desist should be issued. The hearing must be held no earlier than five or later than 10 days after the service of the notice. The bill would eliminate these provisions, and provides instead that if in the opinion of the Commissioner a licensee were, had, or were about to engage in a practice that posed a threat of financial loss or threat to the public welfare, or were, or were about to violate a law or rule, the Commissioner could serve a notice of intention to issue a cease and desist order. The notice would have to contain a statement of the facts constituting the alleged practice or violation, and would have to fix a time and place at which a hearing would be held to determine whether a cease and desist order should be issued against the licensee.

If the licensee failed to appear at the hearing by a duly authorized representative, the licensee would have consented to the issuance of the cease and desist order. In the event of consent, or if upon the record made at the hearing, the Commissioner found that the practice or violation specified in the notice had been established, the Commissioner could issue to the licensee an order to cease and desist from the practice or violation. The order could require the licensee and its officers, directors, members, partners, trustees, employees, agents, and persons exercising control over the business activities of the licensee to cease and desist from the practice or violation, and to take affirmative action to correct the conditions resulting from the practice or violation. A cease and desist order would become effective on the date of service, unless stayed, modified, terminated, or set aside by the Commissioner or a court. A cease and desist order issued upon consent would become effective at the time specified in the order, and remain effective and enforceable as provided in the order. The manner of the service of process would have to be in accordance with the Michigan court rules.

Review of Order. Under the bill, if an applicant for a license were dissatisfied with an order issued by the Commissioner, the applicant could, within 15 days after the order was issued, file with the Commissioner a written notice of request for reconsideration, together with a written statement in support of that request and, if desired, a request for oral argument. The issues raised in the applicant's statement would have to be limited to the Commissioner's findings of fact and conclusions of law set forth in the order.

If the Commissioner granted the request for reconsideration, within 10 days after receiving the statement he or she would have to provide a written response to the request or conduct an oral argument. If the Commissioner did not grant the request, the order would stand. If an oral argument were conducted, it would have to be limited to the issues raised in the applicant's statement. The Commissioner would have to affirm the order or revise it as he or she considered appropriate, within 10 days after the oral argument was completed. For purposes of the Act, an application for a license and the Commissioner's final decisions, findings, rulings, and orders would not be contested cases within the meaning of the Administrative Procedures Act (APA).

If the applicant were aggrieved by an order of the Commissioner, the applicant could appeal within 30 days from the date of the order to the Ingham County Circuit Court in the manner provided by the APA.

A hearing regarding an order would have to be conducted in accordance with the APA. The hearing would be private, unless the Commissioner determined that a public hearing was necessary to protect the public interest. After the hearing and within 90 days after the Commissioner had notified the parties that the case had been submitted for final decision, the Commissioner would have to render a decision (including findings of fact upon which the decision was predicated), and issue and serve upon each party to the proceeding an order. Any party to the proceeding, or any person required by an order to cease and desist, could obtain a judicial review of any order served. (Review of a consent order, however, would be exclusively as provided in the APA.) Unless a petition for review was filed in a timely manner as provided in the APA, the Commissioner, at any time, upon notice that he or she considered proper, could modify, terminate, or set aside the order. Upon the filing of a petition for review, the Commissioner could modify, terminate, or set aside the order with the permission of the court. Unless specifically ordered by the court, the commencement of proceedings for judicial review would not operate as a stay of any order issued by the Commissioner.

Enforcement of Order. The Commissioner could

apply to the Ingham County Circuit Court for the enforcement of any effective and outstanding notice or order, and the court would have jurisdiction and power to order and require compliance with the notice. A court would not have jurisdiction to review, modify, suspend, terminate, or set aside by injunction any notice or order except as otherwise provided in the Act.

Summary Suspension. After a complaint was filed or, as applicable, an investigation or administrative action against a licensee was commenced, the Commissioner could issue an order summarily suspending a license, supported by an affidavit from a person familiar with the facts set forth in the affidavit or, if appropriate, based upon an affidavit on information that an imminent threat of financial loss or imminent threat to the public welfare existed. The order would have to be served upon the licensee, who would have 20 days after the date of the order to file a request for a hearing with the Commissioner. A hearing would have to be held promptly upon receipt of a request. A summary suspension of a license would continue until the Commissioner found that the imminent threat of financial loss or imminent threat to the public welfare no longer existed. The record created at the hearing on the summary suspension would become part of the record on the complaint at a subsequent hearing in a contested case.

Other Legal Action. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license would be in addition to an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license, or any other legal action.

Conservator

Currently, notwithstanding licensing under the Act, if a licensee engaging in the issue or sale of checks that would otherwise be subject to the Sale of Checks Act has refused or is unable to pay its obligations when they are due, or whenever it appears to the Commissioner that a licensee is in an unsafe or unsound condition, the Commissioner may appoint a conservator, or with the Attorney General representing the Commissioner, apply to the circuit court for appointment of a receiver. Under the bill, the Commissioner also could take these actions if a licensee had liabilities that exceeded its assets.

The Act prescribes the duties of a conservator, including taking possession of the books, records, and assets of a licensee. The bill would modify and expand these provisions. The bill provides that if the Commissioner determined that a licensee engaging in loan servicing activities, intentionally or as a result of gross or wanton negligence, was not servicing, as applicable, mortgage loans or secondary mortgage

loans as required by law or by the terms of the servicing contracts, the Commissioner could appoint a conservator for the licensee and require the conservator to provide a bond or security as the Commissioner considered necessary. Alternatively, the Commissioner, through the Attorney General, could apply to the circuit court for the county in which the licensee was located for the appointment of a receiver for the licensee. The conservator or receiver could take possession of the books, records and assets of the licensee and take any other action necessary to ensure that the mortgage loans and secondary mortgage loans were serviced as required by applicable law and the servicing contracts. Further, the bill would allow a conservator, under the direction of the Commissioner, to take sole control of all of the affairs of a licensee. The licensee could transfer or assign the rights to service mortgage loans or secondary mortgage loans to a person approved by the Commissioner. The conservator of the licensee would have to take action as necessary to assure that the mortgage loans and secondary mortgage loans were serviced as required by applicable law and the servicing contracts.

Currently, the Commissioner may terminate a conservatorship and permit a licensee to resume business as prescribed by the Commissioner. The bill also would allow the Commissioner, in his or her discretion, to permit the licensee to continue to conduct one or more business activities subject to those terms, conditions, restrictions, and limitations as the Commissioner prescribed. If the Commissioner determined that it would be in the public interest, he or she could terminate a conservatorship and could apply to the circuit court, for the county in which the licensee was located, for the appointment of a receiver for the licensee.

Funds received for payment of the FIB's expenses incurred in connection with a conservatorship and all expenses for State supervision of conservatorships would have to be deposited in the State Treasury and used to reimburse the FIB.

Reports and Records

Currently, a licensee must maintain records of all transactions under the Act, to be made available to the Commissioner upon request. The bill would delete a current requirement that a record be preserved and kept available for at least 25 months after the final entry on any loan is made. The bill provides that a licensee would have to preserve and keep available for examination by the Commissioner each loan document in its possession or control, including the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the loan was transferred or assigned, or the expiration of two years after the date the loan was made, whichever occurred first. If the loan were transferred or assigned, the licensee

would have to preserve and keep available for examination by the Commissioner, as applicable, copies of the promissory note, mortgage, truth-in-lending disclosure statement, and settlement statement in its possession or control for three years after the date the loan was transferred or assigned. A licensee would have to preserve and keep available for examination by the Commissioner all documents pertaining to a rejected loan application for a period of time required by State or Federal law. A licensee would have to preserve all other books, accounts, records, documents, and files pertaining to the licensee's business and keep them available for examination by the Commissioner for at least two years.

Currently, each year by February 15, a licensee must file a report with the Commissioner, stating the licensee's activities for the preceding calendar year. The bill would require instead that a licensee file an annual report on a date established by the Commissioner, stating the licensee's volume and types of business activities for the preceding calendar year. The Commissioner would have to provide at least 30 days' advance notice of the date each report was due. Failure to file a report could result in nonrenewal of a license by the Commissioner.

Other Provisions

Under the Act, a person must be licensed under the Act or other financial licensing laws to engage in a business activity. A "person" is an individual, corporation, partnership, association, or any other legal entity. The bill provides that a person would include a limited liability company.

The bill provides that the Act would not apply to a savings bank. (Currently, the Act does not apply to a State or national bank, credit union, or savings and loan association.)

MCL 487.2052 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Consumer Financial Services Act allows nondepository financial services entities to obtain one license to perform services that are regulated under six separate financial services licensing Acts. This allows financial services entities that offer multiple financial services to avoid the requirement of applying for, obtaining, and maintaining a license under each Act, even though they must comply with the requirements of each Act if they offer services regulated under those Acts. The Consumer Financial

Services Act, enacted in 1988, has not been altered to conform with amendments that have been made to the six underlying statutes. For example, amendments to the Mortgage Brokers, Lenders, and Servicers Licensing Act and the Secondary Mortgage Loan Act eliminated the licensing of branch offices and restructured regulatory fees. Further, the 1988 Act has not been updated to reflect changes that have occurred in the business practices of the entities that are regulated under it. The bill would revise the Act to address these concerns.

Opposing Argument

Currently, while the Act allows the Commissioner to take actions against licensees for violations of the Act or one of the six underlying Acts, it does not contain specific provisions for punishing individuals who commit acts that put the financial well-being of customers at risk. This means that if an individual engages in unsavory business practices, the Commissioner can take action to restrict the activities of the licensee, but not the individual who caused the problem. Reportedly, if the employee is fired or quits and moves on to another financial institution, the FIB has no way to track his or her movement or to prevent the individual from once again engaging in unsavory practices. As introduced, the bill would have allowed the Commissioner to issue an individual a cease and desist order, and to prohibit him or her from engaging in further business activities with any licensee. The bill as substituted does not contain this provision, and thus weakens the proposed power of the Commissioner to deal with individuals who engage in questionable practices.

Response: The Commissioner currently has the power to punish individuals who work in depository institutions, and would like to see this power expanded to all financial services institutions. This bill, however, is not the place for such provisions because the Consumer Financial Services Act affects only those entities that offer multiple services, and that is a small percentage of the total number of financial services entities. Provisions to allow the Commissioner to prevent individuals from continuing questionable business practices should be placed not only in this Act, but also in each of the other six regulatory Acts. A comprehensive approach to this issue could be taken at a later date.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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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.