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SFA



BILL ANALYSIS

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Senate Bill 668 (as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Senate Committee: Banking and Financial Institutions
House Committee: Insurance and Financial Services

PUBLIC ACT 275 of 1999

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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 had been pointed out that while the Consumer Financial Services Act had not been revised since its enactment in 1988, several of the six licensing statutes had been amended. It was suggested that the Consumer Financial Services Act be revised to reflect changes that had been made to the individual licensing laws, and to reflect recent changes in the business practices of financial services entities.

- **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 may 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 may not engage in loan servicing activities under the

CONTENT

The bill amended 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.**
- **Provide that if an application for a license is not approved, the Financial Institutions Bureau (FIB) must refund the prepaid annual operating fee. (The application fee remains nonrefundable.)**
- **Eliminate a provision that prohibited a licensee from operating a branch office without obtaining an additional license for each branch.**

Secondary Mortgage Loan Act.

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

Previously, only one place of business could be operated under a license. The bill eliminated this provision, and requires a licensee to notify the Commissioner in writing before opening an additional place of business. An application that identifies the locations at which the applicant, if approved, will conduct business activities subject to the Act will meet the notice requirement for those locations. A licensee that elects to cease engaging in business activities at a place of business must provide prior written notice to the Commissioner.

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

Fees

The Act requires the Commissioner to establish an annual schedule of fees sufficient to pay in full the FIB's costs of administering the Act. The bill retained this provision, and continues to require an application fee of \$500 to \$2,000, or \$100 to \$700 if an applicant has one or more licenses under the financial licensing laws. Otherwise, the bill eliminated the previous fee structure, which required 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 provides instead for an annual operating fee that is based upon the volume and types of activities conducted by the licensee during the previous calendar year. The bill eliminated a provision that required 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 eliminated a requirement that a licensee be examined at least annually.

The bill requires an application for a license to include a financial statement showing that the applicant's net worth exceeds \$1 million, if the applicant intends to engage in activities governed by Public Act 379 of 1984. The bill retained 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 must be calculated. The following assets are 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 have an interest, except that construction loan receivables secured by mortgages from related companies are not 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 are 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

Previously, a Class I license applicant had to 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 had to 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 eliminated these provisions and instead requires any license applicant, when required by the Commissioner, to file a surety bond or letter of credit of at least \$500,000, which must remain for the duration of the licensure period. The surety bond or letter of credit must be in a form satisfactory to the Commissioner and payable upon demand by the Commissioner if he or she determines that the licensee is not conducting its activities as required under the Act, and the rules promulgated under the Act, and has failed to pay all money that becomes due to a person who is an installment buyer under the Motor Vehicle Sales Finance Act; Michigan residents who purchase 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 must 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 protects the public interest. Claims may 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 are, 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 purchase checks under the Sale of Checks Act; or persons who are 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 will 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 cannot 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 waives all or part of the right to priority of payment, the Commissioner must 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 exceed the amount of the bond or letter of credit, each claimant except the Commissioner will 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 allows the Commissioner to suspend, revoke, or refuse to renew a license if a licensee does the following:

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

contracts.

- Refuses or fails, within a reasonable time, to furnish any information or make any report that is required by the Commissioner.

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

If the licensee fails to appear at the hearing by a duly authorized representative, the licensee will 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 finds that the practice or violation specified in the notice has been established, the Commissioner may issue to the licensee an order to cease and desist from the practice or violation. The order may 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 is 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 is effective at the time specified in the order, and remains effective and enforceable as provided in the order. The manner of the service of process must be in accordance with the Michigan court rules.

Review of Order. Under the bill, if an applicant for a license is dissatisfied with an order issued by the Commissioner, the applicant may, within 15 days after the order is 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 must be limited to the Commissioner's findings of fact and conclusions of law set forth in the order.

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

If the applicant is aggrieved by an order of the Commissioner, the applicant may 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 must be conducted in accordance with the APA. The hearing will be private, unless the Commissioner determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the Commissioner notified the parties that the case has been submitted for final decision, the Commissioner must render a decision (including findings of fact upon which the decision is 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, may obtain a judicial review of any order served. (Review of a consent order, however, will be exclusively as provided in the APA.) Unless a petition for review is filed in a timely manner as provided in the APA, the Commissioner, at any time, upon notice that he or she considers proper, may modify, terminate, or set aside the order. Upon the filing of a petition for review, the Commissioner may 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 do not operate as a stay of any order issued by the Commissioner.

Enforcement of Order. The Commissioner may apply to the Ingham County Circuit Court for the enforcement of any effective and outstanding notice or order, and the court has jurisdiction and power to order and require compliance with the notice. A court does 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 is filed or, as applicable, an investigation or administrative action against a licensee is commenced, the Commissioner may 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 exists. The order must be served upon the licensee, who will have 20 days after the date of the order to file a request for a hearing with the Commissioner. A hearing must be held promptly upon receipt of a request. A summary suspension of a license will continue until the Commissioner finds that the imminent threat of financial loss or imminent threat to the public welfare no longer exists. The record created at the hearing on the summary suspension will become part of the record on the complaint at a subsequent hearing in a contested case.

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

Conservator

The Act provides that, 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 may take these actions if a licensee has liabilities that exceed its assets.

The Act prescribes the duties of a conservator, including taking possession of the books, records, and assets of a licensee. The bill modified and expanded these provisions. The bill provides that if the Commissioner determines that a licensee engaging in loan servicing activities, intentionally or as a result of gross or wanton negligence, is not servicing, as applicable, mortgage loans or secondary mortgage loans as required by law or by the terms of the servicing contracts, the Commissioner may appoint a conservator for the licensee and require the conservator to provide a bond or security as the Commissioner considers necessary. Alternatively, the Commissioner, through the Attorney General, may apply to the circuit court for the county in which the licensee is located for the appointment of a receiver for the licensee.

Under the direction of the Commissioner or subject to the approval of the court, the conservator or receiver must take possession of the books, records, and assets of the licensee and take any other action necessary to conserve the assets of the licensee, ensure payment of instruments issued by the licensee, or ensure that the mortgage loans and secondary mortgage loans are serviced as required by applicable law and the servicing contracts. Further, the bill requires a conservator, under the direction of the Commissioner, to take sole control of all of the affairs of a licensee. The licensee may transfer or assign the rights to service mortgage loans or secondary mortgage loans to a person approved by the Commissioner.

The Act allows the Commissioner to terminate a conservatorship and permit a licensee to resume business as prescribed by the Commissioner. The bill also allows 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 prescribes. If the Commissioner determines that it is in the public interest, he or she may terminate a conservatorship and apply to the circuit court, for the county in which the licensee is 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 must be deposited in the State Treasury and used to reimburse the FIB.

Reports and Records

Under the Act, a licensee must maintain records of all transactions, to be made available to the Commissioner upon request. The bill deleted a requirement that a record be preserved and kept available for at least 25 months after the final entry on any loan was made. The bill provides that a licensee must 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 is transferred or assigned, or the expiration of two years after the date the loan is made, whichever occurs first. If the loan is transferred or assigned, the licensee must 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 is transferred or assigned. A licensee must 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 must 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.

Previously, each year by February 15, a licensee had to must file a report with the Commissioner, stating the licensee's activities for the preceding calendar year. The bill requires 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 must provide at least 30 days' advance notice of the date each report is 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 includes a limited liability company.

The bill includes reference to a savings bank among the depository financial institutions to which the Act does not apply (i.e., 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, had not been altered to conform with amendments 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 had not been updated to reflect changes that have occurred in the business practices of the

entities that are regulated under it. The bill revises the Act to address these concerns.

Opposing Argument

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 enrolled does not contain this provision, and thus fails to strengthen the power of the Commissioner to deal with individuals who engage in questionable practices.

Response: The Commissioner 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 will 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.