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Senate Bill 489 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Banking and Financial Institutions

Date Completed: 7-12-01

RATIONALE

The Regulatory Loan Act governs businesses that typically make relatively small loans to consumers. For example, loans are made under the Act for the purchase or refinancing of automobiles, the purchase of household goods, or a cash advance, and are either unsecured or secured by collateral. To operate under the Act, a person must obtain a license from the Commissioner of the Office of Financial and Insurance Services (OFIS), in the Department of Consumer and Industry Services; obtain a separate license for each branch office; pay an annual license fee; maintain a certain level of liquid assets; and undergo periodic examinations by the OFIS. In recent years, legislation has changed similar requirements in other statutes that also regulate nondepository lenders, such as the Consumer Financial Services Act. In particular, other types of lenders are subject to an operating fee based on their activities, rather than a flat license fee, and are not required to have a license for each place of business. It has been suggested that these and other revisions be made to the Regulatory Loan Act.

CONTENT

The bill would amend the Regulatory Loan Act to do the following:

- **Allow a licensee to conduct business at more than one location under a single license.**
- **Require a licensee to have a net worth of at least \$100,000 (instead of liquid assets of at least \$50,000 for each location).**
- **Replace the current license fee with an operating fee that would be set by the Commissioner of the Office of Financial**

and Insurance Services based upon a licensee's business activities in the previous year.

- **Delete the current examination fee.**
- **Allow the transfer or assignment of a license with the approval of the Commissioner.**
- **Permit the Commissioner to investigate the activities of a licensee at any time, and require the Commissioner to examine the books, accounts, records, and files of a licensee at least every five years (instead of at least every two years).**
- **Require licensees to report annually, instead of every three years.**
- **Increase the amount of a loan processing fee that licensees may charge, and delete the \$5 limit on the handling fee that licensees may charge for dishonored checks.**
- **Specify additional amounts that licensees could recover from borrowers.**
- **Delete requirements that the Commissioner send copies of rules to licensees, and certified copies of his or her orders to people requesting them.**
- **Authorize the Commissioner, instead of the Attorney General, to bring actions under the Act.**

Licensure

Under the Act, a person may not engage in the business of making loans of money, credit, goods, or things in action, or charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee under the Act and without obtaining a license from the

Commissioner, or a license under the Consumer Financial Services Act.

The bill would delete the requirement that a lender obtain a license from the Commissioner for each location at which the business is to be conducted. The bill would allow a licensee to engage in activities for which a license was required at more than one place of business by providing at least 30 days' written notice to the Commissioner before opening each additional place of business; this provision would not apply to any place of business listed in the licensee's approved application for licensure. A licensee that ceased engaging in business activities subject to the Regulatory Loan Act at a place of business would have to give written notice to the Commissioner within 30 days.

Currently, an applicant must prove that the applicant has available liquid assets of at least \$50,000 for the operation of the business. For each licensed place of business, a licensee must maintain that amount of assets that are either liquid or actually used in the conduct of the business at the specified location. The bill, instead, would require an applicant to have, and a licensee to maintain, available net worth of at least \$100,000.

A license under the Act presently may not be transferred or assigned. Under the bill, a license would not be transferable or assignable without the prior approval of the Commissioner. The bill specifies that the sale, transfer, 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 interest in a licensee that was a partnership or other unincorporated legal entity, would be considered to be a transfer of the license.

(Currently, "licensee" means a person licensed under the Act. The bill also would include a person required to be licensed under the Act.)

Fees

The Act requires the Commissioner annually to establish the schedule of fees sufficient to pay costs of administering the Act. For the issuance or annual renewal of a license, the fee must be at least \$300 but not more than \$800, to be paid by December 22 each year. A renewal fee paid after that date is subject to a penalty of \$25 for each day the fee is

delinquent or \$1,000, whichever is less. The bill would delete that annual fee and the penalty.

Under the bill, for the issuance or annual renewal of a license, the Commissioner would have to establish an annual operating fee based upon the volume and types of activities conducted by the licensee during the previous calendar year. The fee would have to be based upon information in reports filed by licensees.

Currently, for the examination of a licensee, the Act requires a fee of at least \$40 but not more than \$70 per hour for each examiner involved. A licensee also must pay the actual travel and lodging expenses incurred by OFIS employees who travel out of Michigan to examine the licensee's records. The bill would delete these requirements.

Examination; Reporting Requirements

Under the Act, the Commissioner must examine the books, accounts, records, and files of a licensee at least once every two years. The bill would require the Commissioner to do so at least every five years. The bill also would permit the Commissioner, at any time, to investigate the business activities of a licensee as the Commissioner considered necessary; examine the books, accounts, records, and files used and maintained by any licensee; and require a licensee to furnish additional reports relating to the business.

Currently, a licensee must file with the Commissioner, every third year, a report giving all relevant information required by the Commissioner concerning the business and operations during the preceding three-year period of each licensed place of business conducted by the licensee within this State. A report filed under this provision is exempt from disclosure under the Freedom of Information Act, unless the Commissioner finds that disclosure would be in the public interest. The bill would delete these provisions.

Under the bill, by a date established by the Commissioner, a licensee annually would have to file a report stating the licensee's volume and type of business activities for the immediately preceding calendar year. The Commissioner would have to give at least 30

days' advance notice of the date each report was due.

Charges by Licensees

The Act identifies the charges that licensees may make on loans. If an amount other than the permitted charges is charged, contracted for, or received for any reason other than a bona fide clerical error, the loan contract is void and the licensee may not collect or receive any principal, charges, or recompense whatsoever. The bill would delete this provision.

The Act provides that a loan processing fee not to exceed 2% of the principal, up to \$40, may be charged for each closed-end loan made, and may be included in the principal of the loan. The bill would limit the fee to 5% of the principal, up to \$250. The \$250 limit would have to be adjusted every two years to reflect the percentage change in the U.S. consumer price index for the two immediately preceding calendar years, rounded to the nearest hundred dollars.

Under the Act, a licensee may charge a handling fee of \$5 for the return of an unpaid and dishonored check or similar instrument given to the licensee in full or partial repayment of a loan. The bill would delete the \$5 limit, and specifies that a licensee could recover a handling fee as authorized by the Credit Reform Act.

The bill would allow a licensee to recover from the borrower the costs and expenses of retaking, holding, repairing, preparing for sale, and selling any personal property in accordance with provisions of the Uniform Commercial Code.

The bill also would allow a licensee to charge a reasonable fee per payment if a borrower made a payment or payments by authorizing a licensee verbally or in writing to execute a debit or otherwise process a payment, through automated clearing procedures, drawn on the borrower's deposit account. The bill specifies that this provision could not be construed to permit the imposition of a fee in cases in which the borrower, at the time of consummation of the loan, authorized the licensee to effect all periodic installment payments by way of electronic automated clearing procedures drawn on the borrower's deposit account.

Currently, a licensee may not charge, contract for, or receive an interest, discount, or consideration greater than the lender would be permitted to charge if the licensee were not licensed under the Act, upon all or part of any aggregate indebtedness of the borrower, upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than the regulatory loan ceiling. If a licensee acquires the bona fide obligation of a purchaser of goods or services from the person selling the goods or providing the services, then the amount of the purchased or discounted indebtedness to the licensee may not be included in computing borrower's aggregate indebtedness for the purpose of this prohibition. The bill would delete these provisions.

Under the bill, if a regulatory loan contract contained obligations by the borrower to perform certain duties pertaining to insuring or preserving collateral and the licensee, because of the borrower's failure to perform these duties, paid for their performance on the borrower's behalf, the licensee could add the amounts paid to the debt and collect interest at the contract rate on the amounts. Within a reasonable time after advancing any sums under this provision, the licensee would have to notify the borrower in writing of the amount of the sums advanced, any charges with respect to that amount, and any revised payment schedule, and briefly describe the services or products paid for by the licensee, including the type and amount of insurance coverages, if applicable. The licensee would promptly have to terminate insurance or other services procured under these provisions once the borrower provided evidence that the performance of contractual duties had been reinstated.

The bill specifies that a licensee could purchase a contract made in compliance with the Retail Installment Sales Act or the Home Improvement Finance Act.

The bill would delete the requirement that a licensee display in each licensed place of business a full and accurate statement of the maximum charges authorized by the Act to be made upon loans of all classes and the method of computing the charges.

Other Provisions

Under the Act, the Attorney General may bring an action in circuit court to restrain a licensee from engaging in false advertising. The Act also authorizes the Attorney General to bring an action against a delinquent licensee for the recovery of unpaid fees or penalties, and an action for the recovery of a civil penalty from a person who knowingly violates the terms of an injunction, order, or judgment. The bill would authorize the Commissioner to bring these actions.

The bill specifies that, in addition to the penalties provided by the Act, a violation of the Act with respect to a particular regulatory loan transaction also would be subject to the penalty and remedy provisions of the Credit Reform Act.

As currently provided, the Commissioner could promulgate rules necessary for the administration and enforcement of the Act. The bill would delete a requirement that the Commissioner mail to all licensees a copy of a rule at least 10 days before the rule's effective date.

Section 25 of the Act requires the Commissioner, on application of any person, to furnish certified copies of any order made by him or her, and provides that the copies are prima facie evidence in any court or proceeding of the fact of the making of the order. The bill would repeal Section 25.

MCL 493.1 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 Regulatory Loan Act gives the public an alternative method of financing that might be more competitive than other types of arrangements. The bill would bring the Act into conformity with other statutes that govern nondepository financial services, including the Consumer Financial Services Act, the Secondary Mortgage Loan Act, and the Mortgage Brokers, Lenders, and Servicers Licensing Act. Amendments to these Acts already eliminated the separate licensing of branch offices and restructured licensing fees.

The bill would make similar changes to the Regulatory Loan Act as well as update the Act in several other ways, such as by changing the liquid asset requirement to a net worth requirement, allowing licenses to be transferred, increasing the amount of the loan processing fee that licensees may charge, removing the \$5 limit on a returned check charge, authorizing the OFIS to investigate licensees' business activities at any time, and requiring examinations every five years, instead of every two years.

Rather than paying a flat license fee and an examination fee, licensees would have to pay an operating fee based on business activity, and report to the OFIS annually. Licensees also would have to notify the OFIS before opening additional places of business, instead of obtaining a license for each location. Additional provisions would allow a licensee to purchase insurance on collateral (such as a car) if the debtor failed to do so as required, and charge the debtor for the cost; and to charge a debtor a fee for processing a payment automatically in a one-time transaction, upon the debtor's authorization.

These changes would simplify the licensure requirements for lenders and update their operating practices, which in turn could enhance consumers' access to credit.

Response: There are additional ways in which the Act could be improved. For example, the OFIS currently has few regulatory tools to deal with noncomplying licensees, and perhaps should be authorized to assess administrative fines and issue subpoenas. Also, the bill would remove the penalty that may be assessed if a license fee is delinquent, but would not give the OFIS additional enforcement authority. In addition, extending the maximum period between examinations from two to five years would enable the OFIS to concentrate on licensees that present the greatest risk to consumers, but eliminating the time frame altogether would give the OFIS even more flexibility.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would change the fee structure for these licenses by eliminating the examination fee and changing the application fee to an operating fee which would be based on the previous year's activity for a licensee as

opposed to the current flat fee. What the exact fiscal changes would be is difficult to determine as exact operating figures for a licensee could only be estimated at this time. According to the OFIS, there are approximately 45 businesses currently eligible for these licenses.

Additionally, this bill would delete the requirement that copies of rules and orders be sent to either licensees or those requesting them. This change could result in some administrative savings to the OFIS.

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.