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SFA**BILL ANALYSIS**

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Senate Bill 489 (as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Senate Committee: Banking and Financial Institutions
House Committee: Insurance and Financial Services

PUBLIC ACT 270 of 2001

Date Completed: 4-10-02

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; pay an annual fee; maintain a certain level of assets; and undergo periodic examinations by 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 was suggested that these and other revisions be made to the Regulatory Loan Act.

- **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 and accounts 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 a \$5 limit on the handling fee that licensees may charge for dishonored checks.**
- **Specify additional amounts that licensees may 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.**

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 deleted a requirement that a lender obtain a license from the Commissioner for each location at which the business is to be conducted. The bill allows a licensee to engage in activities for which a license is

CONTENT

The bill amended 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 assets of at least \$50,000 for each location).**
- **Replace the flat license fee with an operating fee that will be set by the Commissioner of OFIS based upon a licensee's business activities in the previous year.**
- **Delete an examination fee.**

required at more than one place of business by giving at least 30 days' written notice to the Commissioner before opening each additional place of business. (This requirement does not apply to any place of business listed in the licensee's approved application for licensure.) A licensee that ceases engaging in business activities subject to the Regulatory Loan Act at a place of business must give written notice to the Commissioner within 30 days.

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

A license under the Act previously could not be transferred or assigned. Under the bill, a license is not 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 is a corporation, or more than 25% of the interest in a licensee that is a partnership or other unincorporated legal entity, must be considered a transfer of the license.

("Licensee" means a person licensed under the Act, and, under the bill, 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. Previously, for the issuance or annual renewal of a license, the fee had to be at least \$300 but not more than \$800, to be paid by December 22 each year. A renewal fee paid after that date was subject to a penalty of \$25 for each day the fee was delinquent or \$1,000, whichever was less. The bill deleted that annual fee and the penalty.

Under the bill, for the issuance or annual renewal of a license, the Commissioner must establish an annual operating fee based upon the volume and types of activities conducted by the licensee during the previous calendar

year. The fee must be based upon information in reports filed by licensees.

The Act also sets fees for investigating a license applicant, and amending a license. The bill increased the minimum investigation fee from \$200 to \$250, and the maximum from \$600 to \$1,000. The bill increased the minimum fee for amending a license from \$20 to \$50, and the maximum from \$75 to \$100.

The bill also deleted the fee for the examination of a licensee (which had to be at least \$40 but not more than \$70 per hour for each examiner involved), and a requirement that a licensee pay the actual travel and lodging expenses incurred by OFIS employees who travel out of Michigan to examine the licensee's records.

Previously, if an application was filed after June 30 in any year, the applicant had to pay the investigation fee and half of the annual license fee. The bill deleted this provision.

Examination; Reporting Requirements

Under the Act, the Commissioner must examine the books, accounts, records, and files of a licensee. The bill requires the Commissioner to do so at least every five years, instead of at least every two years. The bill also permits the Commissioner, at any time, to investigate the business activities of a licensee as the Commissioner considers 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.

The bill deleted a requirement that a licensee 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.

Under the bill, by a date established by the Commissioner, a licensee annually must file a report stating the licensee's volume and type of business activities for the immediately preceding calendar year. The Commissioner must give at least 30 days' advance notice of the date each report is due.

Under the Act, a licensee who fails to submit a required report is subject to a penalty, which

formerly was \$25 for each day the report was delinquent or \$1,000, whichever was less. The bill increased those amounts to \$50 and \$5,000, respectively.

Charges by Licensees

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

The Act formerly provided that a loan processing fee not to exceed 2% of the principal, up to \$40, could be charged for each closed-end loan made. The bill limits the fee to 5% of the principal, up to \$250. The \$250 limit must 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 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 deleted a \$5 limit on the handling fee, and specifies that a licensee may recover a handling fee as authorized by the Credit Reform Act.

The bill allows 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 allows a licensee to charge a reasonable fee per payment if a borrower makes 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 may not be construed to permit the imposition of a fee in cases in which the borrower, at the time of consummation of the loan, authorizes the licensee to effect all periodic installment payments by way of electronic automated clearing procedures drawn on the borrower's deposit account.

Under the bill, if a regulatory loan contract contains 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, pays for their performance on the borrower's behalf, the licensee may add the amounts paid to the debt and collect interest at the contract rate on the amounts. Within 30 days after advancing any sums under this provision, the licensee must 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 promptly must terminate insurance or other services procured under these provisions once the borrower provides evidence that the performance of contractual duties has been reinstated.

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

The bill deleted a 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 for the recovery of a civil penalty from a person who knowingly violates the terms of an injunction, order, or judgment. The bill also authorizes the Commissioner to bring these actions. The bill authorizes the Commissioner, instead of the Attorney General, to bring an action against a delinquent licensee for the recovery of unpaid fees or penalties.

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 is subject to the penalty and remedy provisions of the Credit Reform Act.

Under the Regulatory Loan Act, the Commissioner may promulgate rules necessary for the administration and enforcement of the Act. The bill deleted a requirement that the Commissioner mail to all licensees a copy of a rule at least 10 days before the rule's effective date.

The bill repealed Section 25 of the Act, which required the Commissioner, on application of any person, to furnish certified copies of any order made by him or her, and provided that the copies were prima facie evidence in any court or proceeding of the fact of the making of the order.

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 brings 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 eliminated the separate licensing of branch offices and restructured licensing fees. The bill makes similar changes to the Regulatory Loan Act as well as updates 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 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 will have to pay an operating fee based on business activity, and report to OFIS annually. Licensees also will have to notify OFIS before opening additional places of business, instead of obtaining a license for each location. Additional provisions allow a licensee to purchase insurance on collateral (such as a car) if the debtor fails 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 simplify the licensure requirements for lenders and update their operating practices, which in turn may enhance consumers' access to credit.

Response: There are additional ways in which the Act could be improved. For example, 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 removes the penalty that could be assessed if a license fee was delinquent, but does not give OFIS additional enforcement authority. In addition, although extending the maximum period between examinations from two to five years will enable OFIS to concentrate on licensees that present the greatest risk to consumers, eliminating the time frame altogether would give OFIS even more flexibility.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill changes the fee structure for these licenses by eliminating the examination fee and changing the application fee to an operating fee that will be based on the previous year's activity for a licensee as opposed to the flat fee. What the exact fiscal changes will be is difficult to determine as exact operating figures for a licensee can only be estimated at this time. According to OFIS, there are approximately 45 businesses currently eligible for these licenses. The bill also increases fees for investigating an applicant and amending a license, which will increase revenue by an unknown amount.

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

Fiscal Analyst: Elizabeth Pratt

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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.