

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 489 (as introduced 5-17-01)  
Sponsor: Senator Bill Bullard, Jr.  
Committee: Banking and Financial Institutions

Date Completed: 5-23-01

## **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.**
- **Replace the current license fee with an operating fee that would be set by the Commissioner of the Office of Financial and Insurance Services (OFIS).**
- **Delete the current examination fee.**
- **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).**
- **Allow the transfer or assignment of a license with the approval of the Commissioner.**
- **Permit, rather than require, the Commissioner to revoke a license for the reasons described in the Act.**
- **Permit the Commissioner to investigate the activities of a licensee at any time.**
- **Require licensees to report annually, instead of every three years.**
- **Authorize the Commissioner, instead of the Attorney General, to bring actions under the Act.**
- **Increase the amount of a loan processing fee that licensees may charge.**
- **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.**

## **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. 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.

### 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, instead, 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, and would delete the \$40 maximum.

The bill would allow a licensee to recover from the borrower the costs and expenses of retaking, holding, 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. 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.

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

The Act provides that false, misleading, deceptive, or irresponsible advertising is unlawful, and is defined as described in the Act. If the Commissioner has probable cause to believe that a licensee has engaged, is engaging, or is about to engage in unlawful advertising, the

Commissioner must report the matter to the Attorney General. The Attorney General may bring an action in circuit court to restrain the licensee by a temporary or permanent injunction. For persistent and knowing violations, the court may assess the defendant a civil penalty of up to \$5,000. Under the bill, the court could assess this penalty for each violation. Also, the Commissioner, rather than the Attorney General, could bring an action.

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.

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.

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

S0102\S489sa

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.