PA 23-126—sSB 1033
Banking Committee

AN ACT CONCERNING VARIOUS REVISIONS TO THE BANKING STATUTES

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Repeals § 4 of PA 23-45, which expanded the residential heating equipment financing program to include geothermal heating and cooling systems and heat pump dryers

SUMMARY: This act generally makes the following unrelated changes in the banking statutes:

1. raises the maximum dollar amount for loans subject to the state's small loan lending laws from $15,000 to $50,000; redefines "annual percentage rate" (APR); and requires small loan licensure of an exempt lender's agents and service providers under certain circumstances (§§ 1-5);
2. increases the maximum value of retail installment and installment loan contracts for consumer goods and equipment (§ 6);
3. sets requirements for the terms and cancellation of certain guaranteed asset protection and excess wear and use waivers (§ 7);
4. prohibits certain licensed mortgage professionals from (a) using an unlicensed lead generator unless the lead generator is exempt from licensure or (b) helping a lead generator conduct business without a valid license to do so (§§ 9 & 10);
5. eliminates the requirement that mortgage servicer supervisors generally live within 100 miles of a branch office (§ 11);
6. makes a technical change to a banking statute (§ 12);
7. expands the circumstances under which a financial institution does not need to provide notice of a deposit account's closure (§ 13);
8. limits the required advertising and availability of basic bank accounts to banking institution branches and other offices in Connecticut (§ 14);
9. generally applies a "capital and surplus" calculation to certain investment decision making of Connecticut banks (e.g., liabilities of borrowers, debt and equity securities, debt and equity mutual funds, social purpose investments, and mortgage lending) (§§ 15-23);

10. expands Connecticut credit unions' eligible membership by allowing them to (a) have a field of membership that includes both a common bond and a geographic community and (b) add non-member associations (§ 24);
11. requires the Department of Banking (DOB) commissioner to help account holders with matters concerning a financial institution's merger with another institution, including helping to resolve complaints (§ 25);
12. exempts uninsured banks from being licensed as money transmitters (§ 26);
13. modifies the treasurer's Community Banking Program by, among other things, increasing the (a) maximum amount of funds available for the program and (b) asset limit for eligible participating institutions (§§ 27 & 28); and
14. repeals § 4 of PA 23-45, which expanded the residential heating equipment financing program to include energy efficient geothermal heating and cooling systems and heat pump dryers (§ 29).

The act also makes numerous other technical and conforming changes.

EFFECTIVE DATE: October 1, 2023, except as provided below.

§§ 1-5 — SMALL LOAN LENDING

Raises the small loan limit from $15,000 to $50,000; redefines APR; requires small loan licensure of an exempt lender's agents and service providers under certain circumstances

Small Loan Amount

Prior law capped the APR for small loans between $5,000 and $15,000 at 25%. The act increases the maximum small loan amount subject to this cap to $50,000.

APR Calculation

The act also shifts the federal law used to calculate APR for these loans from the Truth-in-Lending Act to the Military Lending Act (MLA) and considers the following to be finance charges for APR calculation purposes:

1. certain premiums and fees specified under MLA regulations (e.g., credit insurance premiums and fees, consumer credit application fees, and debt cancellation and suspension fees);
2. a charge for an ancillary product, membership, or service that is sold in connection or concurrent with a small loan;
3. an amount offered or agreed to by a borrower to obtain credit or to compensate for the use of money; and
4. a fee charged, agreed to, or paid by a borrower that is related to a small loan.

Small Loan Licensure

By law, no one may make a small loan to a Connecticut borrower without, among other things, first obtaining a small loan license. The law has several exemptions to this licensure requirement, such as for banks and credit unions, their subsidiaries, and their servicers under certain conditions; licensed pawnbrokers;

consumer collection agencies; passive buyers of small loans; and retail sellers.

The act requires anyone who claims to act as an agent, service provider, or in any other capacity for an exempt entity to be licensed in the following situations:

1. the person holds, acquires, or maintains the predominant economic interest in the loan;
2. the person markets, brokers, arranges, or facilitates the loan and holds the right, requirement, or right of first refusal to purchase the loan, receivables, or loan interests; or
3. the total circumstances indicate that the person is the lender, and the transaction is structured to avoid small loan regulation.

Under the act, the following circumstances support the position that a person should be licensed as a small loan lender:

1. indemnifying, insuring, or protecting an exempt lender for any of a small loan's costs or risks;
2. predominantly designing, controlling, or operating a small loan program; and
3. purporting to act as an agent, service provider, or in another capacity for an exempt lender in Connecticut and directly acting as a lender elsewhere.

Additionally, the act makes a minor change to an existing law by eliminating a requirement that an institution have its main office or branch office in Connecticut to be considered a "financial institution" that a borrower of a small loan uses to make payments on the loan.

§ 6 — RETAIL INSTALLMENT CONTRACTS

Increases the maximum allowable value of retail installment and installment loan contracts for consumer goods and equipment to $75,000 and $25,000, respectively

The act increases the maximum allowable value of retail installment and installment loan contracts for consumer goods (including motor vehicles) and equipment. Under prior law, the maximum value was $50,000 for consumer goods and $16,000 for equipment. The act increases these amounts to $75,000 and $25,000 respectively, and, by raising these limits, the law will apply to more consumers.

The act also makes a conforming change to the definition of "sales finance company" to include any person engaging in Connecticut in the business of receiving payments (principal and interest) from a retail buyer under a retail installment or installment loan contract. In doing so, the act aligns this definition with the existing one for these companies under their licensing statutes (see CGS § 36a-535).

§ 7 — GUARANTEED ASSET PROTECTION AND EXCESS WEAR AND USE WAIVERS

Sets requirements for the terms and cancellation of certain guaranteed asset protection and excess wear and use waivers

The act sets requirements for certain motor vehicle guaranteed asset protection (GAP) waivers and excess wear and use waivers that it refers to as "debt waivers" when offered by certain entities.

Under the act, a "GAP waiver" is a contractual agreement in which a creditor agrees to cancel or waive some or all of the amount a borrower owes under a motor vehicle retail installment contract or installment loan contract if there is a total loss of the vehicle from damage or theft. It may also provide a benefit that waives an amount or provides a credit toward the purchase of a replacement vehicle.

Similarly, an "excess wear and use waiver" is a contractual agreement in which a creditor agrees to cancel or waive some or all of the amount a borrower may owe under a motor vehicle lease agreement due to excessive wear and use of the vehicle, including excess mileage.

Either waiver may be part of, or a separate addendum to, the contract or agreement, and with or without a separate charge. Collectively, when these waivers are offered by an entity other than a bank, Connecticut credit union, or a federal credit union, the act refers to them as "debt waivers."

The act requires debt waivers to be cancellable and refundable as follows:

1. a full refund of the amount paid for the waiver if (a) the borrower cancels it within 60 days after it takes effect and (b) no benefits have been provided under it;
2. a pro rata refund of the amount paid for the waiver, less any cancellation fee included in its terms, if (a) the borrower cancels the waiver 60 or more days after it takes effect, or if there is an early termination of the contract or agreement, as applicable, and (b) no benefits have been provided under the waiver; and
3. no refund if (a) the borrower cancels the waiver and (b) benefits were provided under it.

Under the act, a creditor, or a retail seller on the creditor's behalf, must pay a refund due to a borrower within 60 days after it receives the cancellation without requiring the borrower to ask for the refund.

The act caps any applicable cancellation fee at $50 and requires the waiver's terms to include the fee. It requires any amount charged or financed for a debt waiver to be separately stated. This amount is considered an authorized charge and not a finance charge or interest. The act specifies that debt waivers are not considered insurance for refund requirements after a repossession.

These provisions apply to GAP waivers and excess wear and use waivers entered into on or after January 1, 2024.

§ 8 — ELECTRONIC CALL REPORT FILINGS

Eliminates the requirement for public deposit reports to be notarized if they are submitted electronically to DOB

The act allows qualified public depositories (i.e., institutions allowed to hold public funds such as banks and credit unions) to electronically submit to DOB the required reports on each call report date without notarization (i.e., certified under oath). Prior law required notarization of all these reports.

EFFECTIVE DATE: July 1, 2023

§§ 9 & 10 — PROHIBITED ACTS OF CERTAIN MORTGAGE LICENSEES

Prohibits certain licensed mortgage professionals from (1) using an unlicensed lead generator unless the lead generator is exempt from licensure or (2) helping a lead generator conduct business without a valid license

The act prohibits licensed mortgage lenders, correspondent lenders, brokers, and loan originators from using the services of a lead generator unless the lead generator is licensed or exempt from licensure (e.g., a federally insured bank or credit union or a subsidiary of the institution). It also prohibits licensed mortgage professionals from assisting or aiding and abetting a person to conduct a lead generator business without a license.

A lead generator is a person who, for or with the expectation of compensation or gain, (1) sells, assigns, or transfers information that identifies a potential residential mortgage loan customer (a lead); (2) generates or adds to a lead for another person; or (3) directs a consumer to a person for a residential mortgage loan through marketing services (CGS § 36a-485).

§ 11 — MORTGAGE SERVICER SUPERVISORS

Eliminates the requirement that certain supervisors of mortgage servicers generally live within 100 miles of a branch office

Under prior law, a mortgage servicer had to have a qualified individual for its main office and a branch manager for each branch, each of whom had to live within 100 miles of the respective location or show that he or she was otherwise able to provide full-time, in-person supervision. The act eliminates this geographic and alternative full-time, in-person requirement.

§ 13 — DEPOSIT ACCOUNT CLOSURE NOTICE

Expands the circumstances under which a financial institution does not need to provide notice of a deposit account's closure

By law, within 10 days after they close a customer's account, financial institutions must generally send the customer a notice that includes the reason for closure. The act expands the circumstances under which a financial institution does not need to provide this notice.

Under prior law, notice was not required if, among other things, the institution (1) believed the account was being used for illegal or fraudulent activity, (2) learned that law enforcement was investigating activity involving the account, or (3) was prohibited by state or federal law from providing it. In addition to these circumstances, under the act, this notice is not needed under the following circumstances:

1. the depositor, or the depositor's agent (e.g., estate representative), closes the account;

2. the institution closed the account after escheating its balance to the treasurer (i.e., the account is presumed abandoned);
3. a beneficiary or the institution closes the account after title to it vests in the beneficiary; or
4. the institution notified the depositor that the account would be closed after a certain date, which has passed, and the reason for closure.

§ 14 — BASIC BANKING ACCOUNTS

Limits the required availability of basic bank accounts, and the advertising of them, to banking institution branches and other offices located in Connecticut

By law, state and federally chartered financial institutions doing business in Connecticut must make a "basic banking account" available to Connecticut residents beginning July 1, 2023. Among other things, these accounts have low minimum initial deposit and balance requirements and are restricted in their permissible fees.

The act limits the applicability of these requirements to the in-state branches and offices of these institutions. It correspondingly makes the advertising (i.e., certain posted information) of these accounts only required at locations in Connecticut.

EFFECTIVE DATE: July 1, 2023

§§ 15-23 — CAPITAL AND SURPLUS REQUIREMENTS

Generally applies a "capital and surplus" calculation to certain investment decisions made by Connecticut banks (i.e., liabilities of borrowers, debt and equity securities, debt and equity mutual funds, social purpose investments, savings banks life insurance, mortgage lending, and real estate for the banks' business)

Definition — Capital and Surplus

The act defines "capital and surplus" using federal Office of the Comptroller of the Currency (OCC) regulations (see 12 C.F.R. § 1.2).

Under these federal regulations, for qualifying community banking organizations that have chosen to use the OCC community bank leverage ratio framework, "capital and surplus" is the bank's (1) tier 1 capital (e.g., common voting stock and retained earnings) and (2) allowance for loan and lease losses or adjusted allowances for credit losses reported in its call report. (A bank leverage ratio shows a bank's financial position regarding debt and capital or assets.)

And for all other banks, "capital and surplus" is (1) a bank's tier 1 and tier 2 (e.g., loan and lease loss allowance, qualifying preferred stock, or subordinated debt) capital, calculated under OCC risk-based capital standards, that it reports in its call report and (2) the balance of the bank's allowance for loan or lease losses or adjusted allowances for credit losses not included in the tier 2 capital, which it uses to calculate risk-based capital in the call report.

Applying Capital and Surplus

The act generally applies, with exceptions (see below), the use of capital and surplus, instead of equity capital and reserves for loan and lease losses (i.e., excess assets over liabilities and amounts reserved against possible loan and lease losses), to the law's calculations for:

1. holding mortgage loans,
2. the liabilities of any one obligor (debtor),
3. debt securities and debt mutual funds,
4. equity securities and equity mutual funds, and
5. social purpose investments.

Existing law, unchanged by the act, imposes various percentage thresholds for determining a bank's ability to hold these investments.

For example, under the act, the total liabilities of any one obligor that are not fully secured to a Connecticut bank (not counting any investment in the obligor's investment securities) cannot exceed 15% of the bank's capital and surplus, instead of equity capital and reserves for loan and lease losses, at the time of the obligation.

The act also prohibits a savings bank from investing more than 5% of its capital and surplus, rather than equity capital, in stocks, obligations, or other securities of The Savings Bank Life Insurance Company (§ 23).

Capital and Surplus Exception Choice. The act allows a Connecticut bank, if it notifies the DOB commissioner by January 1, 2024, to choose to use equity capital and adjusted allowances for credit losses (instead of capital and surplus) for certain calculations. It may do so for the following calculations related to the liability of any one obligor:

1. limits on the liability;
2. limits on obligations as an endorser or guarantor of negotiable or nonnegotiable installment consumer paper, which have an agreement to repurchase upon default;
3. exceptions from limits on obligations of the United States, Connecticut, or a town, city, borough, or legally established district in Connecticut that can levy taxes to pay the obligations;
4. exceptions from limits on obligations of any one obligor, except loans secured by mortgage and insured by the Federal Housing Administrator, which are secured or covered by guaranties or by commitments or agreements to take over or purchase from the United States or the Federal Reserve Bank or any federal department, bureau, board, commission, or establishment (including U.S.-wholly owned corporations) authorized to enter into contracts with a financial institution (a) guaranteeing it against loss of principal and interest on loans, taxes, or advances or (b) agreeing to take them over or purchase them;
5. limits on the obligations of any one obligor that are secured by the pledge of direct or fully guaranteed obligations of the United States;
6. limits on the amount of bills of exchange the bank may accept;
7. exceptions from limits on obligations of certain bankers' acceptances of other banks, securities subject to resale, and certain rentals; and

8. limits on obligations secured by first mortgages on real estate.

The act allows a bank that makes the above choice to subsequently use capital and surplus for the calculations if it notifies the DOB commissioner in writing that it has chosen to do so (§ 19).

For investments in debt securities and debt mutual funds, the act allows a Connecticut bank to use equity capital and adjusted allowances for credit losses (rather than capital and surplus) to calculate limits on the total amount of debt securities and debt mutual funds of any one maker, obligor, or issuer purchased or held by the bank or for the bank's account (§ 20). It similarly allows a bank to use this method to calculate the limit on the total amount of (1) equity securities and equity mutual funds of any one issuer purchased or held by the bank or for the bank's account (§ 21) or (2) securities that are considered social purpose investments of any one maker, obligor, or issuer held by the bank or for the bank's account (§ 22). These choices are also subject to the same January 1, 2024, election and DOB notification or retraction requirements described above for single obligor investments.

Lending Decisions: Loan Policies, Mortgage Issuance, and Bank Property

The act requires Connecticut banks to use capital and surplus, rather than total capital and reserves for loan and lease losses, when deciding standards for material loans (i.e., standards based on the size of the loan in relation to the bank's capacity and risks) (§ 17). It correspondingly applies capital and surplus, rather than equity capital and reserves for loan and lease losses, to decision making for investing in mortgage loans (§ 18).

The act similarly applies capital and surplus to the calculation of whether a Connecticut bank may (1) without DOB commissioner approval, change or improve real estate used for the bank's business or (2) purchase adjoining real estate (§ 16).

§ 24 — CREDIT UNION MEMBERSHIP

Expands Connecticut credit unions' eligible membership by allowing them to (1) have a field of membership that includes both a common bond and a geographic community and (2) add associations beyond those of members

The act expands Connecticut credit unions' eligible membership. Prior law limited their membership to either common bonds (see *Background — Common Bond Membership*) or people in a well-defined community, neighborhood, or rural district ("geographic community"). The act (1) allows credit unions to have a field of membership that includes both a common bond and a geographic community (i.e., a single common bond, multiple common bonds, people in a geographic community, or any combination of the three) and (2) broadens the scope of associations that are eligible common bonds beyond those of existing credit union members.

Under prior law, associations were eligible for credit union membership if the individuals in it belonged to the credit union. Under the act, associations and their

members are eligible, but the association must exist for a purpose other than expanding the credit union's membership. The act requires the DOB commissioner, when deciding whether to approve an association for a credit union's field of membership, to consider the public interest and benefit from inclusion. And when deciding if an association was formed to serve a purpose other than membership expansion, he must consider all circumstances, including at least the following:

1. opportunities for members to participate in furthering the association's goals;
2. association membership eligibility requirements, including whether eligibility is limited to the association's stated purpose, and the maintenance of a membership list;
3. association membership dues and member voting rights;
4. association-sponsored activities and the number of meetings and member participation on topics concerning the association's core purposes; and
5. the degree of separation between the credit union and the association.

Background — Common Bond Membership

By law, a "single common bond membership" is a field of membership consisting of one group that has a common bond of occupation or association (e.g., employees of a company). A "multiple common bond membership" consists of more than one group that has a common bond of occupation or association within each group (CGS § 36a-435b).

§ 25 — DOB FINANCIAL INSTITUTION MERGER RESPONSIBILITIES

Requires the DOB commissioner to (1) help people with accounts at financial institutions when there are issues about the institution's merger with another financial institution and (2) annually report to the Banking Committee on related laws, regulations, and policies

The act requires the DOB commissioner to do the following:

1. provide timely help to financial institutions' account holders with issues related to their institution's merger with another financial institution and post information on DOB's website about the department's availability to help;
2. receive and review complaints from account holders at a financial institution that merged with another financial institution and investigate the complaints if one of the institutions is a Connecticut bank or Connecticut credit union;
3. review information related to complaints involving Connecticut banks and Connecticut credit unions from account holders who provide written consent to the review and help account holders who submit complaints to understand their associated rights and responsibilities;
4. communicate complaints about a financial institution after its merger to its primary regulator if it is an out-of-state bank, out-of-state credit union, or a federal credit union;
5. provide information to the public, state agencies, legislators, and others

about the problems and concerns of people who submit complaints and recommend ways to resolve them; and

6. analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies on financial institutions and their mergers and recommend any necessary changes.

The act also requires the commissioner to take any other necessary actions to fulfill these required duties. By law, "financial institutions" include banks, Connecticut and federal credit unions, and out-of-state banks and credit unions with a branch or office, respectively, in the state (CGS § 36a-41).

Starting by January 1, 2025, the act requires the commissioner to annually submit a report to the Banking Committee that (1) summarizes the commissioner's required analysis of merger laws, regulations, and policies and (2) recommends any changes to federal, state, and local laws, regulations, and policies on financial institution mergers the commissioner deems necessary.

§ 26 — MONEY TRANSMISSION EXEMPTION

Exempts Connecticut banks that are uninsured banks from the Money Transmission Act's requirements, such as licensure and financial conditions

The act exempts uninsured banks organized under state law from money transmitter licensure required by the Money Transmission Act. This law regulates businesses that receive and transmit money and requires them to be licensed and meet certain financial conditions. The law already generally exempts financial institutions such as federally insured banks, federal credit unions, Connecticut banks, Connecticut credit unions, out-of-state banks and credit unions; the United States Postal Service and associated contractors; and those who make electronic funds transfers of governmental or related benefits.

By law, an "uninsured bank" is a Connecticut bank that does not accept retail deposits and for which deposit insurance from the Federal Deposit Insurance Corporation is not needed (CGS § 36a-2(74)).

§§ 27 & 28 — COMMUNITY BANKING PROGRAM

Increases the maximum amount of funds the treasurer may use for the Community Banking Program from $100 million to $300 million; raises the asset limit for financial institutions to be eligible for the program; limits the banks and credit unions eligible to participate in the program to only those organized under Connecticut laws

The law authorizes the treasurer, based on cash availability, to administer a program to invest funding with community banks and credit unions.

The act makes several changes to the program. First, prior law capped the state funds available for the program at $100 million, which the act increases to $300 million.

Second, the act requires the treasurer to establish program eligibility criteria that must include an asset limit for participants. Prior law, through its definitions of "community bank" and "community credit union," limited the institutions eligible

to participate in the program to those with assets of up to $1 billion. The act removes this asset restriction and instead, through the eligibility criteria, requires the following increased participation asset limits:

1. from July 1, 2023, through September 29, 2024, $2 billion is the maximum amount of assets a participating institution may have and
2. after that period, an institution must not have assets exceeding the sum of the previous asset limit and the median percentage loan growth of institutions eligible for the program when the treasurer sets the asset limit.

Under the act, the "median percentage loan growth" is the middle value representing the percentage increase or decrease, as applicable, in loan assets over a time period reflected on the balance sheet of a specified group of lenders. The act requires the treasurer, beginning by July 1, 2024, to annually give DOB a list of institutions eligible to participate in the program when the treasurer provides the list. And DOB, beginning by August 31, 2024, must annually give the treasurer the median percentage loan growth of each eligible institution.

Lastly, in addition to changing the asset eligibility threshold, the act limits the institutions eligible to participate in the program to (1) bank and trust companies, savings banks, and savings and loan associations chartered or organized under Connecticut laws (a "community bank") and (2) cooperative, nonprofit financial institutions that are organized under the Connecticut banking laws, have limited membership, operate for the benefit and general welfare of its members, and are governed by a volunteer board of directors elected by and from its membership (a "community credit union"). Previously, an eligible community bank was a bank domiciled in Connecticut, and a community credit union also included certain federal credit unions.

EFFECTIVE DATE: July 1, 2023

§ 29 — REPEAL OF EXPANSION OF RESIDENTIAL HEATING FINANCING PROGRAM

Repeals § 4 of PA 23-45, which expanded the residential heating equipment financing program to include geothermal heating and cooling systems and heat pump dryers

The act repeals § 4 of PA 23-45, which expanded the residential heating equipment financing program to include energy efficient geothermal heating and cooling systems and heat pump dryers.

EFFECTIVE DATE: July 1, 2023