LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7530 | **NOTE PREPARED:** Jan 15, 2009
BILL NUMBER: SB 571 | **BILL AMENDED:**

SUBJECT: Various Financial Institution Matters.

FIRST AUTHOR: Sen. Paul | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: GENERAL | **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: The bill makes various changes to the laws concerning: (1) financial institutions; (2) debt management companies; (3) pawnbrokers; (4) money transmitters; (5) check cashers; (6) persons licensed under the Uniform Consumer Credit Code; and (7) rental purchase agreements. It repeals provisions being superseded by this bill. It also repeals a provision requiring the display of a license by a debt management company.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary-* The bill adds regulations to creditor directors, officers, and employees, budget services companies, and credit unions. These additional enforcement responsibilities may add to the costs of enforcement by the DFI. However, the bill provides for fees and civil penalties that may offset some of the costs of additional enforcement. Also, the bill provides for some costs savings including the meeting of the members, the venue of administrative and judicial reviews, and exemptions from regulation for certain liquidations. It also adds to potential state and local revenues and costs concerning a Class A misdemeanor, and requires annual license renewals for certain sectors.

Additional Enforcement Responsibilities:

Creditor Directors, Officers, or Employees: The bill includes new regulatory sections concerning the directors, officers, and employees of a creditor which could increase enforcement costs and fine revenue. The bill allows the Director to remove a prohibited director, officer or employee, or impose a civil penalty of $500 for each day of violation concerning willfully permitting a prohibited person to serve a creditor. It provides for hearings and allows the Director to suspend or prohibit participation of a director, officer or employee upon notice. It requires the DFI to maintain official records of these proceedings.

The bill specifies that a final order by the Director may remove the director, officer or employee, prohibit participation, or both. In addition, the Director may impose a civil penalty of up to $15,000 per each practice, violation, or breach committed. These penalties are deposited in the Financial Institutions Fund. This enforcement power is extended to the director, officer, or employee of an affiliate in certain circumstance. Under this section, the DFI may apply for relief to a court having jurisdiction, which could increase enforcement costs for the DFI.

Credit Unions: The bill makes changes to the types of investments a credit union may make, and it requires a credit union to divest stock or other equity investments received through loan default within a year. A credit union may rent excess space at a main office or branch as a source of income. The bill requires credit unions to maintain membership cards in the main office and the minimum information they must contain. It defines an illegal member and requires termination unless there is a loan outstanding, and it allows for trust members if the settler or at least one beneficiary is a member. A credit union must inform the DFI within 30 days of replacement of the chief executive officer. The bill specifies criteria for directors, supervisory committee members, and credit committee members, and makes the credit union board responsible for eight specific duties. Credit unions with assets of at least $5 M (instead of $10 M) will have annual audits performed by an outside accounting firm. The bill allows credit unions to issue shares to and receive deposits from minors, and to receive state and federal funds. It changes the reserve requirements for credit unions and allows for the credit union board to terminate services to members in certain circumstances.

Other Regulations: The bill adds various requirements or prohibitions that could result in more examinations, enforcements, or administrative or judicial proceedings, and, thereby, increase costs for the DFI. The added regulations include:

- Every lessor must keep records of all payments remitted by the lessor on a rental agreement.

- The DFI may revoke licenses or officers or other employees may be disqualified for any felony (rather than felonies involving fraud, deceit, or misrepresentation). This applies to licenses for budget service companies, pawnbrokers, money transmitters, and check cashers.

- A person licensed as a budget service company must notify the DFI within 30 days that a civil action has been filed.

<u>Cost Savings -</u>

Meeting of Members: The bill may reduce traveling expenses for meetings of the members. Four members must be physically present, and then other member may participate using a means of communication that permits all of the members to simultaneously communicate with one another. A member who is not physically present may not cast a deciding vote on an official action.

Background On the Department of Financial Institutions: The Financial Institutions Fund receives all revenue for and pays the annual expenses of the Department. The Department has 7 members who establish policy and procedure for DFI and a Director who administers the DFI. Members who are not state officers receive an annual salary of $4,000 a year plus travel and other expenses. For FY 2008, the Financial Institutions Fund received $8.0 M and paid expenditures of $7.9 M.

Venue: The bill potentially reduces costs for the DFI by specifying that the location for administrative or judicial review is designated by the Director in Marion County, Indiana. This provision is applied to the Uniform Consumer Credit Code, budget service companies, pawnbrokers, money transmitters, and check cashers.

Cost Savings: The bill could reduce costs for the DFI by providing an exception to regulation of the liquidation of financial institutions when the Federal Deposit Insurance Corporation is appointed the receiver. Potentially the bill could reduce costs for the voluntary dissolution of banks, trust companies, and building and loan associations by subjecting undistributed shares to the unclaimed properties law. The bill exempts depository financial institutions and third-party bill paying services from provisions concerning budget service companies.

Explanation of State Revenues: *Budget Service Companies:* Certain violations concerning budget service companies result in a Class A misdemeanor. The bill adds to the requirements subject to this Class A misdemeanor including specific disclaimers, notifications, and agreements that must be given to customers, the preparation of a financial analysis that is renewed annually, and provisions concerning trust funds established with money paid to a licensee for distribution to a debtor's creditors. It also adds permissible fees and prohibited acts that are subject to the Class A misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is $5,000.

In addition, the bill subjects all regulation of budget service companies enforcement by the DFI and allows the DFI to order a company or director to cease and desist from any violations, to order restitution, impose a civil penalty of not more than $10,000 for each violation, and to prosecute civil actions. Also, if a person violates or knowingly authorizes, directs, or aids in violation of a final order, the DFI may impose a civil penalty of up to $20,000. The bill allows the DFI to recover reasonable costs of enforcement. It adds regulations concerning Internet or other electronic means of interaction, specifies English as the language for disclosures and documents unless the licensee communicates with the debtor primarily in language other than English, and it makes the licensee responsible for the conduct of a person to whom a licensee duty or responsibility is delegated.

Rental Purchase Agreements and Late Fees: The bill prohibits a lessor from holding payments in a reserve account for future payments. Violations may result in a civil action to restrain a person from violation or a civil penalty of not more than $1,000. Also, the bill increases the civil penalty for violations concerning rental purchase agreements from $1,000 to $10,000 per violation. The bill removes a $5 per day fee for each day a lessor is late paying a notification fee. Instead the DFI will determine the fee and the fee is applied to the notification fee as well as to the submission of certain information.

Financial Institution Excess Fees: The bill allows the DFI to impose a fee for each that excess costs for examinations of financial institutions are not paid beginning 30 days after receipt of an invoice for the costs.

Pawnbrokers, Money Transmitters, and Check Cashers: The bill requires annual renewal of a pawnbroker license and a check casher license. It allows the DFI to impose a late fee as determined by the DFI (rather than $5) for any renewal not received by June 1 for a pawnbroker. The bill makes an initial license for a money transmitter effective through March 31 rather than December 31.

Explanation of Local Expenditures: *Penalty Provisions:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected:

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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