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FISCAL IMPACT STATEMENT

LS 7530 | **NOTE PREPARED:** Feb 23, 2009
BILL NUMBER: SB 571 | **BILL AMENDED:** Feb 19, 2009

SUBJECT: Various Financial Institution Matters.

FIRST AUTHOR: Sen. Paul | **BILL STATUS:** As Passed Senate
FIRST SPONSOR: Rep. Fry

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
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; (7) rental purchase agreements; and (8) first lien mortgage lenders. The bill repeals provisions being superseded by this bill. The bill repeals provisions concerning: (1) requiring the display of a license by a debt management company; (2) court and personal jurisdiction; and (3) no right to trial by jury.

Effective Date: Upon Passage; July 1, 2009.

Explanation of State Expenditures: *Summary-* The DFI would take on additional enforcement responsibilities under these provisions. Although, the DFI could see an increase in expenditures, the bill would permit additional fees and civil penalties that could offset enforcement costs. The actual impact would ultimately depend on the number of additional enforcement actions taken by the DFI and the level that fees are annually set by the DFI.

There could be some costs savings to the DFI regarding DFI board membership meetings, the venue of administrative and judicial reviews, and exemptions from regulation for certain liquidations. Violation of several of the new regulations would be subject to a Class A misdemeanor, which would affect state and local expenditures and revenues. Annual license renewals would be required of certain sectors including debt management and specialized financial institutions.

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.

First Lien Mortgage Lenders- With respect to first lien mortgage lenders, the bill allows the Director of the DFI 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 act. These penalties would be deposited in the Financial Institutions Fund. This enforcement power is extended to the director, officer, or employee of an affiliate in certain circumstance. 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 an outstanding loan, 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, which could 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 conviction (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 DFI could realize a cost savings from traveling expenses if fewer members needed to be present at meetings of the DFI Board. Under the bill, four members would have to be physically present, with the option for remaining members to participate via use of a simultaneous communication device. A member who is not physically present may not cast a deciding vote on an official action.

Venue- Placing administrative or judicial review in Marion County could potentially reduce costs to the DFI This provision would be applicable for all hearings involving an institution under the Uniform Consumer Credit Code, budget service companies, pawnbrokers, money transmitters, and check cashers.

DFI Savings- There could be a cost savings to the DFI when the Federal Deposit Insurance Corporation (FDIC) is appointed the receiver of a financial institution. [Under the bill, the following would not apply when the FDIC takes receivership instead of the DFI: notify the circuit court clerk in the county the bank is located, court administration, court proceedings, and entering into record all entries, orders, judgments, and decrees made by the court. There could be a reduction in costs for the voluntary dissolution of banks, trust companies, and building and loan associations by subjecting undistributed shares to the unclaimed properties law.

<u>Background Information:</u> DFI Board- The Financial Institutions Fund (FIF) receives all revenue for and pays the annual expenses of the DFI. The DFI Board has seven members who establish policy and procedure for the DFI and the DODFI administering the DFI. Members who are not state officers receive an annual salary of $4,000 a year plus travel and other expenses.

Financial Institutions Fund- During FY 2008, the FIF received $8.0 M and paid expenditures of $7.9 M.

<u>Explanation of State Revenues:</u> *Budget Service Companies:* Budget service companies (BSC) would have various new responsibilities including maintaining specific disclaimers, notifications, and agreements as given to customers and preparation of an annually renewable financial analysis. BSC's would also have to adhere to new permissible fees and certain prohibited acts. Violation of these new provisions would be punishable as a 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.

BSC Compliance Remedies- The DFI could order a BSC or its director to cease and desist from any violations, to order restitution, impose a civil penalty of not more than $10,000 for each violation, or court action. The DFI may impose a civil penalty of up to $20,000 if a person that is in violation of a final order. The DFI would be allowed to recover reasonable costs of enforcement.

Rental Purchase Agreements and Late Fees: A lessor would be prohibited from holding payments in a reserve account for future payments. Violations of this provision could result in additional civil actions or further penalties not exceeding $1,000. The civil penalty amount for violations concerning rental purchase agreements would be raised 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 would be able to determine late fees on notification fees. (Currently, the late fee is $5 per day).

Financial Institution Excess Fees: If reasonable examination costs exceed the fees charged by the DFI to a financial institution, the DFI could charge the institution for those costs. The institution would have to pay the DFI within 30 days after receipt of the DFI's invoice of the costs.

Pawnbrokers, Money Transmitters, and Check Cashers: Pawnbrokers and check cashers would have to annually renewal their license. The DFI would be able to determine a late fee (rather than $5 per day) for any renewal not received by June 1 for a pawnbroker. Money transmitters initial licenses would be 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.

FDIC Receiverships- Circuit court clerks would not have to file court documents from the DFI, if the FDIC where to take a financial institution into receivership.

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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