

Date of Hearing: April 16, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2984 (Limón) – As Amended March 22, 2018

SUBJECT: California Financing Law

SUMMARY: Strengthens the enforcement authority provided by the California Financing Law (CFL) to the Department of Business Oversight (DBO). Authorizes DBO to seek consumer restitution through administrative order. Requires DBO to conduct an examination of each CFL licensee at least once every 48 months.

Specifically, **this bill:**

- 1) Increases the maximum penalty that can be assessed by a superior court for a violation of the CFL from \$2,500 to \$25,000.
- 2) Authorizes a court, upon proper showing, to appoint a receiver, monitor, conservator, or other fiduciary or officer of the court for a licensee or a licensee's assets, and grant ancillary relief as appropriate.
- 3) Authorizes DBO to impose an administrative penalty of up to \$25,000 for violations of the CFL based on the gravity of the violation; whether the person's conduct was negligent, willful, or knowing; and the history of the person's previous violations, subject to the requirements for formal hearings under the Administrative Procedures Act.
- 4) Authorizes DBO to order ancillary relief against any person for violations of the CFL, including restitution or disgorgement or damages on behalf of persons injured by the violation, subject to the requirements for formal hearings under the Administrative Procedures Act.
- 5) Authorizes DBO to recover costs, including attorneys' fees and investigative expenses, related to an administrative action brought under the CFL.
- 6) Requires DBO to examine CFL licensees at least once every 48 months in order to discover violations or to secure information required to enforce the CFL. Requires DBO to take appropriate steps to ensure correction of any violations discovered in the examination.
- 7) Adds to existing annual reporting requirements that CFL licensees report all loans made through a third party in connection with a contractual agreement with the licensee.

EXISTING LAW:

- 1) Provides for the CFL, administered by the Department of Business Oversight (DBO), which requires the licensure of finance lenders, brokers, and program administrators (Financial Code Sections 22000 et seq.).
- 2) Requires CFL licensees to file an annual report with the commissioner of DBO with relevant information the commissioner reasonably requires concerning the business and

operations conducted by the licensee or authorized by the program administrator (Section 22159).

- 3) Authorizes DBO to investigate the loans and business and examine the books, accounts, records, and files of licensees for the purpose of discovering violations of the CFL or securing information required by DBO to administer or enforce the CFL (Section 22701).
- 4) Authorizes DBO to issue an administrative order to correct violations of the CFL and issue an administrative fine not to exceed \$2,500, with such citation or fine in lieu of other administrative discipline and such citation or fine shall not be reported as disciplinary action (Section 22707.5).
- 5) Authorizes DBO to bring an action, or request the Attorney General to bring an action, against a person that has violated or is about to violate the CFL to enjoin that person from continuing the violation. Upon proper showing, requires a court to grant a permanent or preliminary injunction, restraining order, or writ of mandate and other ancillary relief (Section 22713).
- 6) Establishes liability for a civil penalty of up to \$2,500 for each violation of the CFL to be administered by a court of competent jurisdiction (Section 22713(c)).

FISCAL EFFECT: Unknown

COMMENTS:

1) PURPOSE

The author states:

“California’s financial regulator must be equipped with the tools necessary to enforce the laws under its purview. Among its many responsibilities, the Department of Business Oversight (DBO) is charged with administering the California Financing Law (CFL) and protecting consumers from unscrupulous activity by nonbank lenders and brokers in the state.

Relative to banks and credit unions, CFL lenders serve a more vulnerable segment of consumers who have limited or damaged credit histories that preclude them from accessing traditional financial services. These consumers face costly and risky credit options, including loans with interest rates exceeding 100% and loans that require them to pledge their automobiles or personal property as collateral. As these products can lead to debt traps and financial peril, the state has a significant interest in ensuring that CFL lenders and brokers comply with the state’s consumer protection laws.

This bill improves DBO’s examination authority and provides enhanced enforcement tools for serious violations of the CFL. These provisions will make DBO a more effective regulator, strengthen the deterrence effect of the law, and give DBO the authority to make consumers whole when they fall victim to unfair or deceptive business practices.”

2) GAPS IN DBO'S EXISTING AUTHORITY

Some of the largest CFL lenders have adopted business models that did not exist when the Legislature established the CFL enforcement provisions decades ago. In 2006, CFL lenders originated only 57 loans with a principal amount of \$2,500 to \$10,000 and interest rates exceeding 100%. In 2016, CFL lenders originated 346,501 loans with triple-digit interest rates, representing an aggregate principal amount of \$1.1 billion. The data are clear: lenders are marketing far riskier products to a much broader segment of consumers than ever before.

The Legislature has failed to keep up with the rising risk to consumers in the marketplace by failing to update DBO's enforcement authority under the CFL. There are now 18 CFL lenders that originate at least 1,000 loans per year at interest rates above 100%. Unfair or deceptive business practices conducted by any of these lenders can quickly impact hundreds of consumers across the state with potentially serious consequences for financially vulnerable households.

The enhanced enforcement provisions in this bill address the largest gaps in DBO's authority, including:

- *Making consumers whole* – Existing law does not permit DBO to seek administrative relief to compensate consumers who are harmed by violations of the CFL. This bill would authorize the commissioner of DBO to order ancillary relief when the commissioner determines it is in the public interest, subject to due process protections provided by the Administrative Procedures Act.
- *Deterring violations* – Existing law caps penalties for violations at \$2,500. A penalty of this size serves as a weak deterrent and lacks the force necessary to incentivize lenders to comply with the law. Increasing the penalty to \$25,000 will harmonize the CFL with penalties authorized by the California Residential Mortgage Lending Act, CFL mortgage lending, and the Corporate Securities Law of 1968, all of which are laws that DBO enforces.
- *Stabilizing a troubled lender* – Existing law authorizes DBO to bring a civil action to enjoin a licensee from continuing to violate the CFL. This bill would permit a court, upon proper showing, to appoint a conservator, receiver, monitor, or other officer of the court to manage the operations of a troubled lender. This authority is necessary to deal with particularly egregious violations when the officers of a troubled company cannot be trusted to remedy the violations.

3) CFPB PULLING BACK ENFORCEMENT

The Consumer Financial Protection Bureau (CFPB) is the primary federal agency charged with enforcing consumer financial laws and protecting consumers in the financial marketplace. The Bureau was created by the Dodd-Frank Act in response to the fallout from the subprime mortgage crisis in the 2000s. The CFPB has regulatory authority over a broad swath of financial service providers, including banks, credit unions, nonbank mortgage originators and servicers, payday and installment lenders, and private student loan lenders.

Under the leadership of Richard Cordray, the CFPB was a credible regulator. The Bureau actively monitored financial markets and investigated complaints to identify risks to consumers, promulgated rules to address these risks, and brought enforcement actions against bad actors that violated the laws. Through July 2017, the Bureau's enforcement actions generated nearly \$12 billion of relief to 29 million consumers.

Mr. Cordray left the CFPB in November 2017 and was replaced by Mick Mulvaney, who is currently serving as Acting Director of the Bureau. Mulvaney is dogmatically opposed to the core mission of the Bureau to regulate financial markets and protect consumers. Under the control of Mulvaney, the Bureau has ceased to enforce the law. During Cordray's tenure, the Bureau issued an average of two to four enforcement actions each month. Since Mulvaney took over in November, the CFPB has not taken a single enforcement action – no fines or penalties, no compensation to consumers harmed by violations of the law, no lawsuits to stop bad actors or seek redress.

With the federal regulator pulling back, the Legislature has the opportunity to arm the state regulator with the necessary authority to make consumers whole and to deter lenders and brokers from violating the law in the first place. Mulvaney has even called for states to take the mantle from the CFPB, telling the National Association of Attorneys General in February 2018 that the CFPB will be “looking to the state regulators and the states’ attorneys general for a lot more leadership when it comes to enforcement.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Department of Business Oversight
California Low Income Consumers Coalition
California Reinvest Coalition
Center for Responsible Lending
Consumers Union
Greenlining
New Economics for Women
Office of Financial Empowerment, City and County of San Francisco

Opposition

California Financial Services Association

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