Date of Hearing: March 28, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
AB 2001 (Grayson) – As Introduced February 14, 2022

SUBJECT: California Financing Law: remote work

SUMMARY: Authorizes a finance lender licensed under the California Financing Law (CFL) to designate an employee to work remotely on the lender's behalf as long as the finance lender complies with specified privacy, record-keeping, and consumer safety requirements. Specifically, **this bill**:

1) Defines "remote location" as personal residence or a temporary, nonpublic location that is not simultaneously accessible by anyone other than an employee and the employee's immediate family.

2) Authorizes a licensed finance lender to designate an employee, when acting within the scope of employment, to perform work on the licensed finance lender's behalf at a remote location if the licensed finance lender does the following:

   a) Prohibits in-person consumer interactions at a remote location and does not designate a remote location to the public as a business location.

   b) Prohibits records that current law requires be kept in order for the commissioner to determine if the licensee is in compliance with state law from being physically stored at a remote location except for storage on an encrypted device or encrypted media.

   c) Prohibits a consumer's personal information from being physically stored at a remote location except for storage on an encrypted device or encrypted media.

   d) Provides an employee working at a remote location with the appropriate equipment, which may include encrypted devices, virtual private networks, and similar technology, to perform the work and safeguard licensee records and consumer personal information.

   e) Adopts and adhere to appropriate, as determined by the Department of Financial Protection and Innovation (DFPI), written policies and procedures to supervise work of employees at remote locations.

EXISTING LAW:

1) Prohibits a CFL license from conducting the business of making loan or administering a Property Assessed Clean Energy (PACE) program within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasion of the CFL. (Fin. Code Sec. 22154.)

2) Prohibits a finance lender, broker, mortgage loan originator, or PACE program administrator licensee from transacting the business licensed or make any loan or administer any PACE

program provided for by the CFL: under any other name or at any other place of business than that named in the license. (Fin. Code Sec. 22155.)

3) Requires a finance lender, broker, program administrator, and mortgage loan originator licensees to keep and use in their business, books, accounts, and records which will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations made by the commissioner. (Fin. Code Sec. 22156.)

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) **Purpose**

According to the author:

> On March 20, 2022, the Business, Consumer Services, and Housing Agency issued emergency guidance allowing finance lender employees to work remotely. Since that guidance went into effect, there have been no reported issues from consumers or licensees. Despite this positive experience, the emergency guidance will expire when the COVID-19 state of emergency ends. At a time when many employers, including the State of California, recognize that allowing remote work is vital to attracting and retaining talent, removing this ability for finance lenders will place an unnecessary burden on licensees and their employees.

2) **COVID-19's impact on remote work**

The COVID-19 pandemic led to the rapid adoption of remote work across the United States. While the share of workers who telework has gradually been increasing over the last few decades, mandatory stay-at-home orders from state and local officials pushed many professionals into permanent or part-time teleworking. According to the US Census Bureau, after the first year of the pandemic more than a third of US households reported working from home more frequently than before the pandemic.[1]

There is also indication that at least some portion of the workforce that transitioned into remote work during the COVID-19 pandemic will remain remote in the future. Remote work is often attractive to workers because it allows for more flexibility, less driving or commuting, and the ability to live in more affordable communities. And, there is a growing sense among employers, based on recent private sector surveys, that they will be unable to unring the remote work bell and successfully bring employees back into full-time in-person work without facing significant retention challenges. As a result, remote work is expected to become more common in the coming years, with a September 2021 survey by freelance

[1] Joey Marshall et al, "Those Who Switched to Telework have Higher Income, Education, and Better Health," US Census Bureau (March 31, 2021), available at https://www.census.gov/library/stories/2021/03/working-from-home-during-the-pandemic.html.

platform UpWork finding that approximately 41 million American workers to be fully remote in the next five years.[2]

Importantly, remote work is not practical for all types of occupations, and its availability depends on the nature of the industry and the employee's tasks and obligations. Professional industries that rely more on computers tend to transition toward remote work more easily, and this has had implications for who has benefited from this shift.[3] The Census Bureau reports for those employees that were able to move to telework at the start of the pandemic were more likely to be better educated or have higher incomes: those with a bachelor's degree or higher were more than three times as likely as those with a high school education only to have an adult in their household who substituted in-person work for telework.[4]

3) **Remote work in the banking and financial services industry**

The shift toward remote work has been complicated for the banking and financial services because of rigorous rules around data privacy and security. Remote work is allowed for bank and credit union employees, for example, but these employees must follow strict protocols around the use of customer data.[5] Among the many federal and state laws and rules related to privacy and security, financial institutions must comply with the Sarbanes-Oxley Act, which establishes requirements for the secure storage and management of certain electronic financial records, as well as the Gramm-Leach-Bliley Act, which regulates the collection, safekeeping, and use of financial information and requires bank and nonbank institutions to adopt measures to protect customer data.[6] Thus, many of the barriers to remote work within the financial services industry have been technical, management, and logistical in nature.

Moreover, many nonbank financial services companies must comply with state licensing laws that severely limit the ability for a licensee to allow an employee to work from an unlicensed branch of the company. For this reason, industry groups such as the American Financial Services Association (AFSA) have requested both federal and state policymakers to allow more remote work flexibility, either through regulatory guidance or legislative clarity. In July 2020, AFSA and the California Financial Services Association (CFSA), this bill's sponsor, sent a letter to DFPI requesting permanent remote work flexibility, citing a

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[2] Adam Ozimek, *Future Workforce Report 2021: How Remote Work is Changing Businesses Forever*, Upwork (September 28,2021), available t https://www.upwork.com/research/future-workforce-report.

[3] Susan Lund et al., "What's next for remote work: An analysis of 2,000 tasks, 800 jobs, and nine countries," McKinsey Global Institute (November 23, 2020), available at https://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries#.

[4] Joey Marshall et al, "Those Who Switched to Telework have Higher Income, Education, and Better Health," US Census Bureau (March 31, 2021), available at https://www.census.gov/library/stories/2021/03/working-from-home-during-the-pandemic.html.

[5] For a demonstration of the logistical steps a particular industry actor must take when allowing for remote work, see: https://www.cutimes.com/2020/10/09/cybersecurity-in-the-age-of-remote-working-how-cus-can-safeguard-operations/?slreturn=20220220142127

[6] Gramm-Leach-Bliley Act's "Safeguards Rule" applies to a wide range of financial institutions. FTC notes this rule applies to all businesses that are "significantly engaged" in providing financial products and services, including payday lenders, nonbank lenders, real estate appraisers, and courier services. For more information, see: https://www.ftc.gov/business-guidance/resources/financial-institutions-customer-information-complying-safeguards-rule.

number of technology advancements that allow licensees to conduct their work safely and in a way that is almost indistinguishable from on-site work. [7]

4) **California has allowed some financial services licensee employees to work remotely during the COVID-19 pandemic.**

California, like many other states, took action at the start of the COVID-19 pandemic to provide worksite flexibility to some of its financial services licensees. In March 2020, the Business, Consumer Services, and Housing Agency (BCSH) and DFPI issued emergency guidance that granted certain licensees, including finance lenders and servicers, escrow agents, student loan servicers, and residential mortgage lenders and servicers, additional flexibility around remote work. The guidance stated that DFPI would not take enforcement action against licensees operating unlicensed branches to the extent that, during the state of emergency, employees conduct activities provided that appropriate measures are taken to protect consumers and their state.

The emergency guidance also stated that DFPI would not criticize student loan servicers or licensees sponsoring mortgage loan originators who permit their employees to work from home, provided that:

a) The employee does not keep any physical business records at home or anywhere other than the licensed location;

b) The employee does not meet with any customers at home;

c) The licensee has a procedure in place to supervise employees as required by law;

d) The employee uses only computers and devices that are encrypted and accesses the licensee's network using a virtual private network that is encrypted;

e) The licensee and employee take all other necessary measures to protect consumer data privacy.

5) **This bill authorizes permanent remote work for finance lender employees.**

AB 2001, based on model legislation published by AFSA, incorporates many of the protections established in the March 20, 2020 emergency guidance into a permanent remote work authorization for finance lender licensees.

This bill applies specifically to finance lenders licensed under the CFL, which reflects a subset of all the entities over which DFPI has enforcement authority. A finance lender can be a wide variety of nonbank entities who provide a range of consumer and commercial loan products, such as installment loans. Unlike some other licensure programs, a finance lender's employee does not need to obtain a license. Moreover, not everyone who lends in California needs to obtain a CFL license: banks, savings and loans associations, credit unions, broker-dealers, licensed mortgage lenders, insurance companies, credit card companies, and public corporations are all exempt from CFL licensure requirements.

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[7] "Work From Home Resources," available at https://afsaonline.org/work-from-home-resources/.

6) **Support**

This bill is sponsored by CFSA, who states that AB 2001 "will provide added flexibility for finance lenders who must compete for workers in the emerging remote-work economy."

Writing in support, One Main Financial, a lender, notes that the technology and ability to conduct safe remote work exists and can be effectively utilized:

> Since DFPI's emergency guidance on remote work went into effect, no major issues have been reported and the experience has been positive. According to the American Financial Services Association (AFSA), the pandemic has necessitated technology enabled remote working. Although many companies have invested in virtual private networks (VPNs) and other advanced technology before 2020, the pandemic has fostered a cultural shift forward years or arguably even decades. For business models that support it, and with the right technology and training in place, consumers have a very similar experience with a financial institution employee working from home as in a commercial office. It's been proven that nearly all operational functions for many financial service business models can take place through remote working. The pandemic has shown us that working from home, works.

REGISTERED SUPPORT / OPPOSITION:

Support

California Financial Services Association (Sponsor)
One Main Financial

Opposition

None on file.

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