

Date of Hearing:

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2559 (Bauer-Kahan) – As Introduced February 19, 2020

SUBJECT: California Financing Law: enforcement and penalties

SUMMARY: Authorizes the Department of Business Oversight (DBO) to seek claim for ancillary relief on behalf of persons harmed by the acts of a licensee related to a violation of the California Financing Law (CFL).

Specifically, **this bill:**

- 1) Authorizes DBO to include a claim for ancillary relief in a citation to a licensee or in a desist and refrain order related to a violation of the CFL. Ancillary relief may include, but not be limited to, refunds, restitution, or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the enforcement action.
- 2) Allows DBO to report the citation and fine payment by the licensee as a disciplinary action.
- 3) Makes technical amendments that specify the judicial process for when DBO applies to the superior court for a judgment in the amount of the administrative fine and an order compelling the cited licensee or person to comply with the order.

EXISTING LAW:

- 1) Provides the California Financing Law (CFL), which requires the licensure and oversight by DBO of businesses that provide secured and unsecured consumer and commercial loans and assessment contracts in the state (Division 9 of the Financial Code, Section 22000 et seq.).
- 2) Pursuant to the CFL, authorizes DBO to take enforcement action against a person for violating the requirements of the CFL, which may include, among other actions, revoking or suspending a license, issuing a citation with an order to correct the violation, assessing an administrative fine of up to \$2,500 per violation, or an order to desist and refrain from engaging in certain activities.

FISCAL EFFECT: Unknown.

COMMENTS:

1) PURPOSE

The purpose of this bill is twofold: (1) to ensure consumer and commercial borrowers can be made whole when DBO finds that a violation of the CFL has caused the borrower harm, and (2) to clarify the judicial process when DBO seeks a judgment to enforce an administrative order. This bill will create a more fair lending market for borrowers and improve the efficiency of interactions between the state financial regulator and the court system.

2) RIGHTING WRONGS

One objective of regulating financial services activity is to establish a more efficient and equitable marketplace between borrowers and lenders. In many instances, providers of financial services have more information about the legal structure and financial risks associated with financial products than their customers have. Providers of financial products often retain attorneys and financial experts to design and offer their products, while consumers and small businesses may only have a simple working knowledge of basic financial principles. This information asymmetry may create economic inefficiencies and unfair outcomes if financial services activity is permitted to occur without government oversight.

The California Financing Law (CFL) regulates the activity of nondepository lenders (meaning lenders that are neither banks nor credit unions) and the brokers that serve as intermediaries between potential borrowers and lenders. Oftentimes, CFL lenders make loans to borrowers that cannot access credit at the lower rates provided by banks or credit unions due to a variety of factors, such as the borrower's credit score, income, net worth, or loan size. The CFL provides a licensure and regulatory framework that allows the state to provide basic protections for borrowers and routine oversight of the activities of CFL licensees.

Under current law, DBO has the authority to take a range of enforcement actions for violations of the CFL, including issuing an administrative order to pay a penalty and refrain from illegal actions. The law requires that the State retains the penalty funds and does not permit the State to require reimbursement or other compensation to be paid to the borrower that is actually harmed by the illegal act. Under current law, the CFL incentivizes good behavior by providing authority to fine illegal acts, but the CFL fails to provide a direct mechanism for harmed consumers to be made whole. This bill rectifies that lack of authority.

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-income Consumer Coalition
Consumer Action
Housing & Economic Right Advocates

Opposition

None received.

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