

Date of Hearing: April 29, 2013

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Roger Dickinson, Chair

AB 1091 (Skinner) – As Amended: April 18, 2013

SUBJECT: Finance and mortgage lenders.

SUMMARY: Provides that the commissioner of the Department of Corporations (Commissioner) may issue a citation to a licensee under the California Finance Lenders Law (CFLL) or the California Residential Mortgage Lending Act (CRMLA) under certain circumstances. Specifically, this bill,

- 1) Specifies that upon inspection, examination, or investigation, if the commissioner believes that a licensee under the CFLL or CRMLA has violated their licensing law then the commissioner may issue a citation to the licensee or person that may contain a desist and refrain order and the assessment of a \$2,500 administrative penalty per violation.
- 2) Provides that a CFLL may not engage in specified practices, nor knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the licensee is a party.
- 3) Provides that the CFLL does not apply to a person that makes no more than five commercial loans in a 12-month period and that the loans are incidental to that person's business.
- 4) Clarifies that the CFLL does not apply to industrial development corporations when acting under federal law or other state authority, or pawnbrokers when acting under authority of their license.

EXISTING LAW

- 1) Provides for the regulation of finance lenders under the CFLL. (Financial Code Section 22000 *et seq*).
- 2) Regulates non-bank residential mortgage lenders under the CRMLA. (Financial Code, Section 50000 *et seq*).

FISCAL EFFECT: Unknown

COMMENTS:

AB 1091 expands the enforcement powers of DOC under the CFLL by:

- 1) Prohibiting a licensee from conducting business in an unsafe or injurious manner, consistent with the protection in the CRMLA;
- 2) Prohibiting a licensee from engaging in any unfair or deceptive act or practice, consistent with the protection in the CRMLA;

- 3) Prohibiting a licensee from knowingly misrepresenting, circumventing, or concealing, through subterfuge or device, any material aspect or information regarding a transaction to which the licensee is a party, consistent with the protection in the CRMLA.

In 2011 the Legislature passed SB 53 (Calderon), Chapter 717 Statutes of 2011 that gave the commissioner of the Department of Real Estate (DRE) the authority to issue citations and/or fines to licensees found to have violated provisions of the Real Estate Law. AB 1091 attempts to bring the same provisions of the Real Estate Law into the CRMLA and the CFLL with the following:

- 1) Provides the DOC with the authority to bring administrative penalties and desist and refrain orders through the issuance of a citation, under both the CRMLA and the CFLL.
- 2) Allows the DOC to take the citation to superior court and obtain a judgment, thereby facilitating collection of penalties, where the penalties are not paid.

Additionally, AB 1091 provides for an exemption from licensure under the CFLL to ensure that exempt lenders are only exempt for activities that are overseen by another regulatory authority. This exemption would allow businesses that are not lenders to make a de minimis number of commercial loans, such as bridge loans, by increasing the exemption for commercial lending from 1 loan to 5 loans in a 12 month period so long as the loans are incidental to the person's business.

Amendments.

As already established, this bill seeks to incorporate the ability of the commissioner to issue citations similar to the authority given to DRE. Committee staff recommends the adoption of amendments in order to ensure that the citation authority proposed for use by the commissioner is consistent with the authority already provided to DRE. The following are the suggested amendments:

- 1) Amend Section 3 as follows,

~~22707.5. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or person is violating any provision of this division or any rule or order thereunder, the commissioner may issue a citation to the licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. All penalties collected under this section shall be deposited in the State Corporations Fund.~~

~~(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.~~

(a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a person or licensee is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designated representative may issue a citation to that person or licensee in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500), which shall be deposited into the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person or licensee cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business activity or activities or an order to suspend all business operations to a person or licensee who is engaged in or has engaged in continued or repeated violations of this part. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal penalties

(c) If, within 30 days from the receipt of the citation, the licensee or person cited fails to notify the department that he or she intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and an order compelling the cited licensee or person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

2) Amend Section 5 as follows:

~~50501.5. (a) If, upon inspection, examination, or investigation, the department has cause to believe that a licensee or person is violating any provision of this division or any rule or order thereunder, the commissioner may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. All penalties collected under this section shall be deposited in the State Corporations Fund.~~

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Note regarding Governor's Reorganization Plan # 2 (GRP #2).

Last year the Legislature passed GRP #2 which reorganizes various functions within state government. Among the numerous changes provided in GRP #2 is the creation of the Department of Business Oversight (DBO) that will be operational on July 1, 2013 and will result in combining DOC and the Department of Financial Institutions. This analysis uses the term commissioner of DOC as that is the appropriate designation until July 1, 2013. If this bill becomes law then commissioner, as referred to in this bill, will become be the commission of DBO.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081