

Date of Hearing: January 10, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 577 (Limón) – As Amended April 7, 2021

**As Proposed To Be Amended**

**SENATE VOTE:** 38-0

**SUBJECT:** Financial institutions: money transmission: escrow agents: lenders and brokers: banking

**SUMMARY:** Makes a series of technical changes and corrections to laws administered by the Department of Financial Protection and Innovation (DFPI). Specifically, **this bill:**

- 1) Reenacts the de minimis “no more than one commercial loan per twelve-month period” exemption in the CFL that expired on January 1, 2022.
- 2) Repeals the requirement that DFPI submit a annual summary regarding the activities of the Bank on California Program to the chairpersons of the Senate Committee on Banking and Financial Institutions and the Assembly Committee on Banking and Finance.
- 3) Corrects obsolete references in the Escrow Law by replacing a reference to the Federal Savings and Loan Insurance Corporation with a reference to the Federal Deposit Insurance Corporation and replacing a reference to the former Chapter 18 of Division 1 of the Financial Code with a reference to Chapter 10 of Division 1.1 of the Financial Code.
- 4) Declares this act to be necessary for the preservation of the public peace, health, or safety and will go into effect immediately, rather than at the start of the next year. States that certain complex financial transactions governed by the California Financing Law, including those falling within an exception from that law, will be subject to further delays if this act does not take effect immediately.

**EXISTING LAW:**

- 1) Until January 1, 2022, exempted from the California Financing Law (CFL) a person who makes no more than one commercial loan, as defined, in a twelve-month period (Financial Code Section 22050.5).
- 2) Establishes the Bank on California Program within the Department of Business Oversight (department) and requires the department to submit a brief annual summary regarding the activities of the Bank on California Program to the chairpersons of the Senate Committee on Banking and Financial Institutions and the Assembly Committee on Banking and Finance (Financial Code Sections 80001 and 80002).
- 3) Contains various references in the Financial Code to the Department of Business Oversight.

- 4) Contains obsolete references in the Escrow Law (e.g., to the Federal Savings and Loan Insurance Corporation and to a chapter in Division 1 of the Financial Code that was moved to Division 1.1 several years ago).

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

**COMMENTS:**

1) PURPOSE

This bill is an author-sponsored measure that makes corrective and technical changes to provisions of the Financial Code administered by DFPI.

2) MAJOR PROVISION #1: DE MINIMIS CFL EXEMPTION

Generally, California law has allowed for some type of “de minimis” exemption that would allow for limited commercial lending without the need for the lender to become licensed under the CFL. As the Senate Banking and Financial Institutions Committee analysis notes, the exemption was first created in 1997 and allowed for one commercial loan in a 12-month period without triggering a licensing requirement. AB 1091 (Skinner), Chapter 243, Statutes of 2013, replaced this exemption with a five-loan de minimum exemption so long as those loans were “incidental” to the business of the entity making the loans. The intent of this change was to minimize unnecessary over-regulation of businesses and exempting from the CFL certain commercial financing transactions, which are structured as loans by entities that are not otherwise lenders.

AB 1091’s change to the de minimis exemption led to unintended consequences for entities that help facilitate loans eligible for federal New Market Tax Credits (NMTC). NMTC transactions are carried out through a subsidiary which is created specifically to raise tax credit equity and to make a loan to a qualifying borrower. Therefore, NMTC lenders are typically created for the express purpose of making one loan in a low-income community, which means these entities were not able to use the new exemption because these loans were not “incidental.”

SB 777 (Lara), Chapter 478, Statutes of 2016, addressed the above issue by re-adding the one-loan de minimis exemption but left unchanged the newer five-loan de minimis exemption. SB 777 also included a January 1, 2022 sunset date for the added exemption. This bill reinstates the exemption without the sunset (see description of amendments in Comment #4).

3) MAJOR PROVISION #2: BANKON REPORTING REQUIREMENT

“Bank On” programs aim to reduce barriers to banking through partnerships between public agencies, community groups, and banks and credit unions. The first Bank On program was created in San Francisco in 2005, in response to a survey that identified approximately 50,000 unbanked households in that jurisdiction, many of which housed people of color.

In 2008, the state created the “Bank On California” program to build on the San Francisco program and to encourage other local governments to launch similar efforts. Bank On California did not initially start with legislative authorization and was housed first within the

Governor's Office of Planning and Research and then the Consumer Services Agency. AB 1292 (Dababneh), Chapter 750, Statutes of 2015, codified Bank On California within DBO (the former name of DFPI) and required a report to be submitted annually to the Chairs of the Senate and Assembly Banking Committees regarding the activities of the Bank on California.

Today, the Bank on California program, as a state-led effort, is mostly defunct. While individual programs were created in various cities and regions across the state, active management of the state program shifted from the state to the Cities for Financial Empowerment Fund (CFE). Today, the CFE-led effort remains a robust effort that works with community leaders and business partners to reduce barriers to banking.

This bill deletes the requirement that DFPI report annually to the Legislature regarding the Bank on California, since the state no longer actively manages the program.

#### 4) PROPOSED AMENDMENTS

As originally introduced in 2020, this bill would have removed the existing January 1, 2022 sunset date for CFL exemption described in Comment #2, thereby making the exemption permanent. This exemption is widely understood to have worked as intended. However, the author did not proceed with the bill because of the impact of the COVID-19 pandemic on the legislative process. The exemption has now expired and the committee has received feedback that this is hindering certain complicated commercial financial transactions.

As proposed to be amended, this bill reinstates the exemption without a sunset, which mirrors what the bill would have done if it had been signed into law in 2020, and adds an urgency clause to allow the bill's provisions to take effect immediately.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

None on file.

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