

Date of Hearing: July 2, 2012

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 979 (Vargas) – As Amended: May 1, 2012

SENATE VOTE: 38-0

SUBJECT: Financial institutions.

SUMMARY: Requires the Commissioner of the Department of Financial Institutions (DFI) to make its formal, final enforcement actions public on their Internet Web site. Specifically, this bill:

- 1) Specifies that if the commissioner makes a determination in writing that the publication of a final order or decision would seriously threaten the safety or soundness of a regulated institution subject to that order or decision, the commissioner may delay publication of the order or decision for a reasonable time.
- 2) Specifies that if the commissioner makes a determination that the publication of a final order or decision would reveal information which would identify a customer of the institution subject to the order, the commissioner may redact from the order, prior to publication, any information that, in the determination of the commissioner, would identify any customer of the subject institution.
- 3) Makes other technical changes.

EXISTING LAW

- 1) Authorizes the Commissioner of DFI to do all of the following:
 - a) Issue a cease and desist order to an unlicensed person who the commissioner finds is engaging in activities that require a license from DFI, without having obtained that license (Financial Code, Section 567);
 - b) Issue a cease and desist order to a licensee, officer or employee of a licensee, or holding company of a licensee, which the commissioner finds is violating, or is about to violate any statute, regulation, or order of the commissioner, following notice and an opportunity for the accused to be heard (Financial Code, Section 580);
 - c) Issue a cease and desist order to a licensee, officer or employee of a licensee, or holding company of a licensee, without prior notice and an opportunity for the accused to be heard, when the commissioner finds that the accused is engaging in, or is about to engage in a violation that may cause the insolvency of the institution, significantly dissipate the assets or earnings of the institution, weaken the institution, or otherwise prejudice the interests of the customers of the institution (Financial Code, Section 581);
 - d) Order a licensee whose books or records are so incomplete or inaccurate that the commissioner is unable to determine the financial condition of the licensee or the details

or purpose of any transaction(s) that may materially affect the financial condition of the licensee to cease any activity that gave rise to the incomplete or inaccurate state of the books or records, or take affirmative action to restore the books or records to a complete and accurate state (Financial Code, Section 582);

- e) Suspend or remove officers or employees of licensees or their holding companies, and prohibit them from participating in the conduct of the affairs of the licensee or holding company, if, after notice and an opportunity for the accused to be heard, the commissioner finds that the officer or employee has violated or caused an institution to violate any statute, regulation, or order of the commissioner; engaged or participated in any unsafe or unsound act in connection with the business of the licensee, its holding company, or another business; or breached his or her fiduciary duty (Financial Code, Section 585);
- f) Take the actions described in “e” above, without prior notice and an opportunity for the accused to be heard, if the commissioner finds that such action is necessary or advisable for the protection of the licensee, its holding company, or the rights or interests of customers or members of the licensee (Financial Code, Section 586);
- g) Suspend or remove any officer or employee of a licensee or its holding company, without prior notice or an opportunity for the accused to be heard, if they have been indicted or convicted of a criminal violation involving dishonesty or breach of trust, a criminal violation of specified provisions of the Financial Code, a criminal violation of specified federal statutes, or a criminal violation of a law of any jurisdiction other than the United States that is substantially similar to the specified federal statutes, as specified (Financial Code, Section 587);
- h) Modify or rescind an order issued pursuant to Sections 585 through 587, upon an application from a licensee or current or former officer or employee of a licensee to whom/which an order is issued (Financial Code, Section 588);
- i) Suspend or revoke any license if, after notice and an opportunity for the accused to be heard, the commissioner finds that (Financial Code, Section 590).
 - i) The licensee has violated any applicable statute, regulation, or order of the commissioner, or any provision of any written agreement between the licensee and the commissioner, or any condition imposed on any written approval granted by the commissioner;
 - ii) Any fact or condition exists which, if it had existed at the time of the original application for the license, would have resulted in denial of the license;
 - iii) The licensee is conducting its business in an unsafe or unsound manner;
 - iv) The licensee has inadequate capital or net worth or is insolvent, or is in such condition that it is unsafe or unsound for the licensee to transact licensee business;

- v) The licensee failed to pay any of its obligations as they came due, or is reasonably expected to be unable to pay its obligations as they come due;
 - vi) The licensee has sought bankruptcy relief;
 - vii) The licensee refused to submit its books, papers, and affairs to the inspection of any DFI examiner, or any officer of the licensee refused to be examined upon oath regarding the affairs of the licensee; or,
 - viii) The licensee, with the approval of its board, asked the commissioner to take possession of its property and business.
- j) Suspend or revoke any license, without prior notice and opportunity for the accused to be heard, if the commissioner finds that any of the factors described immediately above in “i” is true, and that immediate suspension or revocation of a license is necessary for the protection of the public (Financial Code, Section 591); and,
- k) Take control of the property and business of any licensee, without prior notice and opportunity for the accused to be heard, if the commissioner finds that any of the factors described immediately above in “i” is true (Financial Code, Section 592), and notify the fact of that control to all persons holding or having assets of the licensee in their possession (Financial Code, Section 594).

FISCAL EFFECT: Unknown.

COMMENTS:

Need for the bill: According to the author, this bill is intended to improve transparency of enforcement action brought by DFI and ensure that California's policies regarding the publication of final, formal enforcement action by our financial regulators is consistent with federal transparency policies in this area.

Background: DFI regulates California-chartered banks and credit unions, as well as, several other types of financial and money services businesses, such as trust companies and money transmitters. As part of its regulatory duties, DFI conducts regular examinations of its licensees, and takes enforcement actions, as necessary to ensure that its licensees are operating in a safe and sound manner, and in accordance with state law. During its examination process, DFI routinely makes recommendations to licensees regarding enhancements they can make to their policies, procedures, internal routines and controls, and comments on other operational matters, with the aim of ensuring the safety and soundness of the institution and the state’s financial services system. Often, these recommendations are informal. However, when more serious failings are observed, DFI’s actions take the form of formal orders.

Informal actions taken by DFI following an examination of a licensee include making recommendations to the licensee’s board of directors within the Report of Examination that is sent to each institution following a regulatory examination. Sometimes DFI requests that the board/ management of an institution respond with an action plan to address these recommendations. DFI can also require follow-up reports on the progress an institution is making in addressing those recommendations.

This bill does not propose to require DFI to make the results of its informal enforcement actions public, because financial institutions typically lack any appeal rights related to these informal actions, and because these actions are typically taken by DFI following the discovery of relatively minor problems at an institution.

Formal enforcement actions include cease and desist orders, by which the Commissioner may order an institution to cease and desist from a specific unsafe or unsound act or a violation of applicable law. Other formal enforcement actions include the removal of a person from office at a licensee, the revocation or suspension of a license held by a licensee, a decision to take possession of the property and business of a licensee, a decision to impose civil penalties on a licensee for a violation or violations of applicable law, and a decision to refer a licensee to the State Attorney General for criminal prosecution. These formal enforcement actions do include appeal rights, and do not become final, until a licensee either waives its right to appeal or exhausts its administrative appeal rights pursuant to the Administrative Procedures Act. It is these final, formal enforcement orders that this bill requires DFI to make public. DFI does not currently make these enforcement actions public.

All of the federal depository institution regulators, including the Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and National Credit Union Administration, make their final, formal enforcement actions public.

This bill also contains an exemption, patterned on a federal law applicable to the National Credit Union Administration, which allows the DFI Commissioner to delay the publication of any final enforcement order or decision, if the DFI Commissioner believes that such publication is likely to seriously threaten the safety or soundness of an institution subject to that order or decision.

PRIOR LEGISLATION

SB 706 (Price) Chapter 712, Statutes of 2011. This measure required the Department of Real Estate (DRE) to make public, on its Internet Web site the status of every license issued by DRE, including information on suspensions and revocations of licenses, and other related enforcement actions, such as formal accusations.

RECOMMENDED TECHNICAL AMENDMENT

On page 2, line 3- delete "his or her" and insert "the department's".

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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