

## CONCURRENCE IN SENATE AMENDMENTS

AB 1864 (Limón)

As Amended August 25, 2020

Majority vote

**SUMMARY:**

Enacts the California Consumer Financial Protection Law (CCFPL), which provides the renamed Department of Financial Protection and Innovation (formerly, Department of Business Oversight) with oversight and enforcement authority related to providers of consumer financial products and services that are not currently under the department's authority. Prohibits unlawful, unfair, deceptive, and abusive act or practices by persons subject to the CCFPL.

**The Senate Amendments:**

Delete the Assembly version of the bill and provide the following:

- 1) Renames the Department of Business Oversight (DBO) as the Department of Financial Protection and Innovation (DFPI) and maintains the department's existing authorities and duties.
- 2) Authorizes DFPI to bring enforcement actions permitted by 12 United States Code (U.S.C.) 5552 (which include judicial, administrative, or regulatory proceedings brought by a state regulator), to enforce specified provisions of federal law related to consumer financial protection and regulations issued by the Consumer Financial Protection Bureau (CFPB), with respect to an entity that is licensed, registered, or subject to oversight by DFPI. Authorizes DFPI to secure remedies provided by the Consumer Financial Protection Act of 2010.
- 3) Enacts the California Consumer Protection Law (CCFPL), which provides the following:
  - a) Exemptions for the following:
    - i) Licensees of state agencies other than DFPI to the extent that such entities are acting under the authority of the other state agency's license.
    - ii) Specified list of existing licensees of the DFPI, including, but not limited to, banks, credit unions, residential mortgage lenders, finance lenders, and money transmitters. Does not exempt two classes of existing DFPI licensees: deferred deposit originators (payday lenders) and student loan servicers.
    - iii) Banks, credit unions, and other financial institutions acting under the authority of a license, certificate, or charter under federal law or the laws of another state.
  - b) Prohibits a person from engaging in any unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial products or services.
  - c) Authorizes DFPI to administer the CCFPL, including the responsibility to regulate the offering and provision of consumer financial products and services under applicable state and federal laws, to bring administrative and civil actions to enforce violations of those laws, and to publish research and reports.

- d) Authorizes DFPI to prescribe rules related to the following:
- i) Registration of covered persons and requirements for payment of registration fees, unless the covered person is a licensee of DFPI or another state agency and is acting under the authority of that license. Authorizes DFPI to prescribe rules for registered covered persons to facilitate oversight by DFPI, including records retention policies, background checks for key officers, and bonding or other appropriate financial requirements.
  - ii) Unlawful, unfair, deceptive, and abusive acts or practices. Requires that such rules consider the relative harm to the consumer, the frequency of the act or practice, and whether such act or practice is unintentional or stems from a technical, clerical, or nonmaterial error. Requires that DFPI interpret "unfair" and "deceptive" consistent with existing state law in Business and Professions Code 17200 and the case law thereunder.
  - iii) Ensuring that accurate and effective disclosures are provided to consumers.
  - iv) Unfair, deceptive, and abusive acts or practices in connection with the offering or provision of commercial financing, as specified, to small business recipients, nonprofits, or family farms.
- e) Establishes legislative oversight of DFPI's activities pursuant to the CCFPL through the following:
- i) Sunsets regulations related to registration programs within four years unless the Legislature takes action to extend the registration or to incorporate the scope of the activity into a new or existing licensing law. Requires the Legislature to conduct public hearings to obtain input on the desirability of extending, revising, or terminating the regulation.
  - ii) Requires DFPI to submit to the Legislature, prior to the year the regulation related to registration is scheduled to sunset, a report with information about the department's activities related to the registration program since its enactment.
  - iii) Requires the commissioner of DFPI to appear before the appropriate committees of the Legislature at least once annually and report on the department's activities over the past year and a description of the department's intended activities in the coming year.
- f) Authorizes DFPI to bring a civil or administrative action, as specified, against a covered person or service provider who engages, has engaged, or proposes to engage in unfair, deceptive, or abusive practices with respect to consumer financial products or services. Provides specified relief that may be sought on behalf of consumers harmed by the acts or practices and provides specified penalties that may be ordered by DFPI after accounting for mitigating factors and the appropriateness of the penalty with respect to specified considerations.

- g) Authorizes DFPI to issue an order directing a person to desist and refrain from engaging in an activity, act, practice, or course of business that is unlawful, unfair, deceptive, or abusive, as specified.

## COMMENTS:

The proposed California Consumer Financial Protection Law (CCFPL) would provide DFPI with the tools and authority to enforce existing state and federal laws with which financial services companies must already comply. This bill does not amend existing state consumer finance laws, thus preserving the consumer protections and enforcement authority provided by existing laws. Further, the proposal does not amend current DBO authorities related to the implementation of licensing laws under the department's jurisdiction.

This bill provides clear authority for DFPI to regulate the broad market of consumer financial products and services provided to California consumers. By borrowing the definitions and structure from Dodd-Frank, this bill leverages the value of an existing regulatory framework to which industry participants are already subject. Companies that provide consumer financial products and services, regardless of whether they are required to be licensed under existing state law, should already have programs in place to comply with Dodd-Frank and CFPB regulations, and those companies will be able to use their existing policies and procedures to ensure compliance with this law. The regulatory framework inspired by Dodd-Frank provides DFPI with the appropriate tools to regulate market activities based on the functional characteristics of products and services that are offered and provided to Californian consumers.

In addition to building on existing statutory authority, this bill builds on existing DBO expertise. DBO is primarily comprised of staff who are engaged daily in activities envisioned by this bill: examinations, enforcement actions, and consumer outreach. The department has relevant management experience and established policies and procedures that provide a strong foundation for implementing the additional duties required by the bill.

The CCFPL builds on DBO functions by:

- 1) Consolidating oversight authority over consumer financial products and services, while preserving enforcement authority provided to the Attorney General.
- 2) Empowering DFPI to address a broader set of consumer complaints.
- 3) Ensuring that DFPI can hold any financial service providers accountable for treating a California consumer unfairly, deceptively, or abusively.
- 4) Filling the gaps between statutory definitions that are often outdated and fail to cover new business models and practices.
- 5) Establishing a requirement that, after an appropriate rulemaking, financial services companies register with DFPI to ensure that such companies are legitimate and able to perform their obligations to consumers.

DBO is currently charged with regulating a substantial portion of the financial services industry in California, including banks and credit unions (except for institutions with a national charter or licensed by another state), money transmitters, nondepository lenders, payday lenders, residential

mortgage lenders, student loan servicers, and escrow agents. This bill provides DFPI with an expanded scope of oversight authority over business activity that is not currently regulated by DBO. Examples of newly covered products or business activity include, but are not limited to, debt collection, debt settlement, credit repair, check cashing, rent-to-own contracts, retail sales financing, consumer credit reporting, and lead generation.

**According to the Author:**

Last year, I introduced AB 1048 to start the important conversation of strengthening our consumer financial protection capabilities at the state level. In March 2019, the Assembly Banking Committee held an informational hearing to examine gaps in our existing regulatory approach. Subsequent to that hearing, I worked with a coalition of former CFPB officials and consumer law experts to shape a vague concept into a specific proposal for the Legislature to consider. The Governor's inclusion of the proposal in his January budget provided a pathway for our state regulator to receive the necessary resources and authority to carry out a renewed vision of putting consumers first. AB 1864 will provide the renamed Department of Financial Protection and Innovation with the appropriate authority to oversee unregulated areas of the financial marketplace, creating a best-in-class state regulatory agency that will protect California consumers from unfair, deceptive, and abusive practices by financial services companies.

**Arguments in Support:**

A coalition of consumer protection groups and legal aid organizations writes:

SB 819 would rename DBO the Department of Financial Protection and Innovation (DFPI) and establish the DFPI as a regulator with comprehensive oversight of the financial industry. It would ensure that the agency has the necessary tools to monitor everyone from debt collectors to fintech companies offering consumers quick cash. It would offer security and relief to the tens of millions of Californians who now find ourselves too close to the financial edge. And it would establish California as a national leader in protecting consumers, small businesses, and communities struggling to recover financially from the pandemic...

An overhaul of DBO into a new mission-driven, consumer-focused agency is urgently needed this year so the agency will be in place during the worst of the coming downturn – when the desperation of low-income Californians will be at its height, and the swindlers who prey upon them most ruthless.

**Arguments in Opposition:**

The California New Car Dealers Association argues that new car dealers should be exempted from the bill, but their letter does not acknowledge the existing exemption in the bill related to licensees of other state departments or describe how that exemption is insufficient for car dealers.

A coalition of payday lenders and other high-cost lenders argues that all existing licensees of DBO should be exempt from the proposed California Consumer Financial Protection Law. The coalition also raises concerns around definitions and terms that it argues do not provide sufficient clarity

**FISCAL COMMENTS:**

Unknown.

**VOTES:**

**ASSEMBLY FLOOR: 60-14-5**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Daly, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

**NO:** Bigelow, Brough, Cunningham, Megan Dahle, Flora, Fong, Gallagher, Kiley, Lackey, Mayes, Obernolte, Patterson, Voepel, Waldron

**ABS, ABST OR NV:** Chen, Choi, Diep, Mathis, Smith

**UPDATED:**

VERSION: August 25, 2020

CONSULTANT: Michael Burdick / B. & F. / (916) 319-3081

FN: 0003678