
THIRD READING

Bill No: AB 1864
Author: Limón (D)
Amended: 8/25/20 in Senate
Vote: 21

SENATE BUDGET & FISCAL REVIEW COMMITTEE: 13-5, 8/29/20
AYES: Mitchell, Beall, Caballero, Durazo, Hertzberg, Hurtado, Leyva, McGuire,
Monning, Pan, Roth, Skinner, Wieckowski
NOES: Nielsen, Dahle, Melendez, Moorlach, Morrell

ASSEMBLY FLOOR: Not relevant

SUBJECT: Financial institutions: regulation: Department of Financial
Protection and Innovation

SOURCE: Author

DIGEST: This bill seeks to reorganize and rename the Department of Business Oversight (DBO), to clarify DBO's authority to enforce provisions of the federal Dodd-Frank Wall Street Consumer Financial Protection Act of 2010 over existing licensees, to protect consumers from unlawful, unfair, deceptive, or abusive acts or practices, and to expand DBO's jurisdiction to cover currently unlicensed persons that offer or provide consumer financial products and services in California.

ANALYSIS: This bill contains the necessary changes to enact the California Consumer Financial Protection Law (CCFPL) and add Division 24 to the Financial Code with a purpose to promote consumer welfare, fair competition and wealth creation in the state. More specifically, this bill:

Reorganization and New Activities

- 1) Retains all the powers, duties, responsibilities and functions of the DBO and renames it the Department of Financial Protection and Innovation (DFPI).

- 2) Merges the Division of Corporations and the Division of Financial Institutions under the Division of Corporations and Financial Institutions, overseen by a Senior Deputy Commissioner appointed by the Governor and subject to Senate confirmation.
- 3) Establishes and requires all moneys collected under the CCFPL to be deposited into the Financial Protection Fund.
- 4) Establishes the Financial Technology Office under DFPI to promote innovation and consumer access within financial technology services sector.
- 5) Establishes a new Division of Consumer Financial Protection with a Senior Deputy Commissioner appointed by the Governor and subject to Senate confirmation.
- 6) Authorizes the DFPI to perform new activities like consumer financial product market research and targeted consumer outreach and education programs.

Clarifying Statutes and Provisions

- 7) Clarifies that DFPI, as a state financial market regulator, has the authority to bring a civil action or other appropriate proceedings against an entity licensed, registered or subject to oversight by the DFPI to enforce the provisions of the Consumer Financial Protection Act of 2010 (12 U.S.C. Sec. 5481 et seq.) or regulations issued by the federal Consumer Financial Protection Bureau.
- 8) Clarifies that in the instance that a provision in this division is preempted by federal law, the provision shall not apply and shall not be enforced to the extent of that it is preempted.
- 9) Makes clear that enforcement authority provided by this bill is applicable only to acts and practices engaged in on or after the operative date of this act.

Notable Definitions

- 10) Defines a covered person as any person that engages in the offering or providing of a consumer financial product or service to a California resident.
- 11) Defines a service provider, with some exceptions, as any person providing a material service to a covered person in connection with the offering or provision by that covered person of a consumer financial product or service.
- 12) Provides that the CCFPL also makes other necessary definitions.

Exemptions

13) Exempts the following from CCFPL:

- a) A licensee or employee of a licensee of another state agency to the extent that licensee or employee is operating under the authority that state agency's license.
- b) A bank, bank holding company, trust company, savings and loan association, savings and loan holding company, credit union or an organization subject to oversight of the Farm Credit Administration when acting under the authority of federal law or the law of another state.
- c) A person or employee of that person to the extent that they are currently licensed under the authority of one of the specified divisions of the Financial Code and the Corporations Code. Exempted employees and licensees include: check sellers, bill payers, and proraters (Division 3 of the Financial Code); escrow agents (Division 6 of the Financial Code); finance lenders, finance brokers, program administrators, and mortgage loan originators (Division 9 of the Financial Code); residential mortgage lenders, mortgage servicers, and mortgage loan originators (Division 20 of the Financial Code); broker-dealers and investment advisors (Division 1 of Title 4 of the Corporations Code); capital access company licensees (Division 3 of Title 4 of the Corporations Code), and any person doing business under a license, charter, or certificate issued under the Financial Institutions Law (Divisions 1, 1.1, 1.2, 1.6, 5, 7, and 15 of the Financial Code).

Prohibited Acts

The CCFPL:

14) Prohibits covered persons or service providers from:

- a) Engaging in unlawful, unfair, deceptive, or abusive acts or practices with respect to consumer financial products or services.
- b) Offering or providing a consumer a financial product or service that is not in conformity with any consumer financial law.
- c) Failing or refusing to maintain and make accessible records required by a consumer financial law or any rule or order issued by the DFPI.

- 15) Holds any person who knowingly or recklessly provides substantial assistance to a covered person or service provider who violates the prohibited acts above liable to the same extent as the person who violates those acts.

Unlawful, Unfair and Deceptive or Abusive Acts or Practices

- 16) Defines “unfair” and “deceptive” acts and practices consistent with the California’s Business and Professions Code (Section 17200) and related case law.
- 17) Defines “abusive” acts and practices as acts and practices that materially interfere with the ability of a consumer to understand terms or conditions of a financial product or service and/or that take unreasonable advantage of the lack of understanding of the consumer and/or the inability of the consumer to protect their interests in selecting or using a consumer financial product or service. This definition is consistent with provisions of the federal Consumer Financial Protection Act of 2010.
- 18) Allows the department to prescribe rules and regulations applicable to any covered person or service provider identifying unlawful, unfair, deceptive or abusive acts or practices in connection with the offering of:
 - a) A consumer financial product or service. In promulgating these rules, the department is required to consider the relative harm to consumer, the frequency of the act or practice, and whether the act is unintentional or stems from a technical, clerical, or nonmaterial error.
 - b) Commercial financing or other offering or provision of financial products and services to small business recipients, nonprofits and family farms. This rulemaking may include data collection and reporting.

Registration Requirement and Oversight Activities

- 19) Allows the DFPI to promulgate rules and regulations regarding registration requirements applicable to covered persons engaged in the business of offering or providing consumer financial products or services.
- 20) Allows the DFPI to set and collect an annual registration fee for each entity required to register. The required registration fee must be limited to the reasonable regulatory costs and take into account the size and market participation of the entity.

- 21) Allows the DFPI to prescribe regulations required to facilitate oversight of covered persons. Rules may require covered persons to generate, provide, or retain records for oversight purposes.
- 22) Allows the DFPI to prescribe rules to ensure that the features of any consumer financial product or service are accurate and disclosed to consumers in a manner that permits consumers to understand the risks, costs and benefits of the financial service or product.
- 23) Allows the DFPI to establish, by rule, reasonable procedures for covered persons and service providers to provide a timely response to consumers and the department concerning consumer inquiries or complaints.
- 24) Provides that the rules described above (19-23) must be promulgated prior to any related enforcement action by the DFPI against covered persons or service providers for a violation.

Enforcement

- 25) Authorizes the DFPI to bring an enforcement action against any covered person or service provider who engages in unlawful, unfair, deceptive or abusive practices with respect to consumer financial products and services.
- 26) Provides DFPI authority to seek relief including rescission or reformation of contracts, refunds, restitution, disgorgements, payment of damages, public notification regarding violations, set limits on the activities of the person cited, and impose the monetary penalties described immediately below.
- 27) Authorizes penalty amounts that range from \$5,000 for each day the violation or failure to pay continues or \$2,500 for each act or omission in violation to \$1,000,000 for each day the violation or failure to pay continues or \$25,000 for each act or omission in violation. These penalties are consistent with those provided in the federal Consumer Financial Protection Act of 2010.
- 28) Requires, in determining the size of the penalty, DFPI to take into account mitigating factors such as the gravity of the violation, the financial resources of the person charged, that person's history of violations, the severity of risks or losses to the consumer, and other related matters.
- 29) Authorizes the use funds obtained through enforcement of any of the laws administered by the DFPI, with some exceptions, to be used to administer the CCFPL.

- 30) Authorizes the department to enter into an agreement with the Attorney General with respect to civil actions. Ensures that nothing in the provisions provided limits the authority of the Attorney General to prosecute violations of civil or criminal laws.
- 31) Clarifies that nothing in the bill limits the authority of any district attorney or city attorney lawfully permitted to bring actions to enforce California's Unfair Competition Act.

Legislative Oversight of DFPI

- 32) Requires that the DFPI promulgate rules for registration of a covered person or service provider within three years after the second action to enforce a violation of the CCFPL against covered persons providing the same or substantially similar financial product or service.
- 33) Sunsets each registration requirement four years after the initial year of required registration of that category of covered persons. At the end of the sunset, requires the Legislature to conduct public hearings regarding the desirability or feasibility of extending, revising, or terminating the registration. Provides that the Legislature can:
 - a) Take action to extend the registration or
 - b) Incorporate the activity in which the covered person is authorized to engage into a new or existing licensing law.
 - c) Ensures that failure of the Legislature to do any of the above will not impact the DFPI's enforcement authority.
- 34) Requires the DFPI to submit a report of its activities related to the covered person required to be registered to the appropriate committees in the Legislature on or before December 1 before the year the registration regulation is scheduled to become inoperative.
- 35) Requires the Commissioner of the DFPI to appear before the appropriate committees of the Legislature annually and present a report reviewing all activities conducted to implement CCFPL during the prior year and all of the activities planned to implement the CCFPL during the upcoming year.
- 36) Requires the DFPI to prepare and publish on the department's website actions taken during the prior year including rulemaking, enforcement, activities of the financial technology innovation office, consumer complaints and resolutions,

education, outreach, research and recommendations for improved oversight, transparency and availability of financial products and services.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Budget and Fiscal Review Committee, this bill contains no fiscal appropriations. However, the Administration estimates a cost of \$10.2 million and 44 positions in 2020-21, an additional \$4.6 million and 28 positions in 2021- 22, and an additional \$4.5 million and 18 staff positions in 2022-23 and ongoing funding. This is an overall increase of \$19.3 million and 90 positions by the end of 2022-23 upon full implementation of DFPI.

SUPPORT: (Verified 8/29/20)

None received

OPPOSITION: (Verified 8/29/20)

None received

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