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SB-1361 Department of Business Oversight: administration. (2017-2018)

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Senate Bill No. 1361

CHAPTER 699

An act to amend Sections 329, 331, and 583 of, and to add Section 331.5 to, the Financial Code, relating to the Department of Business Oversight.

[Approved by Governor September 22, 2018. Filed with Secretary of State September 22, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1361, Bradford. Department of Business Oversight: administration.

Existing law, the Financial Institutions Law, regulates the activities of various financial entities, including commercial banks, industrial banks, and trust companies. The Financial Institutions Law authorizes the Commissioner of Business Oversight to levy civil penalties against any specified financial institutions licensee, or any subsidiary of a licensee, for violations of law that apply to that particular category of financial institution, as defined. Existing law prohibits the commissioner and his or her designees from disclosing or permitting the disclosure of any record, record of any action, or information contained in a record of any action, taken by the commissioner, except as specified, to persons other than federal or state government employees who are authorized by statute to obtain the records in the performance of their official duties, unless the disclosure is authorized or requested by the affected licensee or the affected subsidiary of the licensee.

This bill would delete that prohibition and would require the commissioner to make all final orders issued pursuant to those provisions public on the department's Internet Web site.

Existing law authorizes the commissioner to adopt and implement a method of accepting electronic filings or applications, reports, or other matters, as specified. Existing law requires this method to include a way of verifying the identity of the person making the filing and provides that this verification satisfies other verifications required by the Financial Institutions Law.

This bill would deem the verification described above to satisfy all other verifications required by the commissioner. The bill would also require a licensee subject to the commissioner's jurisdiction to establish and maintain an electronic service address, as specified, for receiving communications and documents from the commissioner, the address to be provided upon licensure. The bill would require a licensee to inform the commissioner of a change in the address prior to the change, would require the licensee to provide the commissioner the new address, and would authorize the commissioner to impose a fine of up to \$50 a day, not to exceed \$1,000, for a failure to do so. The bill would require the commissioner to provide specified licensees an electronic service address designated for receiving correspondence from them. The bill would provide that communications sent to these electronic service addresses do not satisfy notice requirements, or displace laws or regulations, that require notice to be served in a different manner, if a hearing right attaches to the notice.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 329 of the Financial Code is amended to read:

329. (a) For purposes of this section, the following definitions apply:

(1) "Applicable law" means:

(A) With respect to any bank, Division 1.6 (commencing with Section 4800), and any of the following provisions:

- (i) Article 6 (commencing with Section 405) of Chapter 3.
- (ii) Article 3 (commencing with Section 1130) of Chapter 5 of Division 1.1.
- (iii) Chapter 6 (commencing with Section 1200) of Division 1.1.
- (iv) Chapter 10 (commencing with Section 1320) of Division 1.1.
- (v) Chapter 14 (commencing with Section 1460) of Division 1.1.
- (vi) Article 1 (commencing with Section 1530) of Chapter 15 of Division 1.1.
- (vii) Chapter 16 (commencing with Section 1550) of Division 1.1.
- (viii) Chapter 20 (commencing with Section 1750) of Division 1.1.
- (ix) Section 456.
- (x) Section 457.
- (xi) Section 459.
- (xii) Section 460.
- (xiii) Section 461.
- (xiv) Section 1331.
- (xv) Chapter 21 (commencing with Section 1850) of Division 1.1.
- (xvi) Chapter 18 (commencing with Section 1660) of Division 1.1.
- (xvii) Chapter 19 (commencing with Section 1670) of Division 1.1.

(B) With respect to any savings association, any provision of Division 1.6 (commencing with Section 4800) and Division 2 (commencing with Section 5000).

(C) With respect to any insurance premium finance agency, any provision of Division 7 (commencing with Section 18000).

(D) With respect to any business and industrial development corporation, any provision of Division 15 (commencing with Section 31000).

(E) With respect to any credit union, any of the following provisions:

- (i) Section 14252.
- (ii) Section 14253.
- (iii) Section 14255.
- (iv) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.
- (v) Section 14401.
- (vi) Section 14404.
- (vii) Section 14408, only as that section applies to gifts to directors, volunteers, and employees, and the related family or business interests of the directors, volunteers, and employees.
- (viii) Section 14409.

(ix) Section 14410.

(x) Article 5 (commencing with Section 14600) of Chapter 4 of Division 5.

(xi) Article 6 (commencing with Section 14650) of Chapter 4 of Division 5, excluding subdivision (a) of Section 14651.

(xii) Section 14803.

(xiii) Section 14851.

(xiv) Section 14858.

(xv) Section 14860.

(xvi) Section 14861.

(xvii) Section 14863.

(F) With respect to any money transmitter, any provision of Division 1.2 (commencing with Section 2000).

(2) "Licensee" means any bank, savings association, credit union, trust company, money transmitter, insurance premium finance agency, or business and industrial development corporation that is authorized by the commissioner to conduct business in this state.

(b) Notwithstanding any other provision of this code that applies to a licensee or a subsidiary of a licensee, after notice and an opportunity to be heard, the commissioner may, by order that shall include findings of fact which incorporates a determination made in accordance with subdivision (e), levy civil penalties against any licensee or any subsidiary of a licensee who has violated any provision of applicable law, any order issued by the commissioner, any written agreement between the commissioner and the licensee or subsidiary of the licensee, or any condition of any approval issued by the commissioner. The commissioner shall have the sole authority to bring any action with respect to a violation of applicable law subject to a penalty imposed under this section.

Except as provided in paragraphs (1) and (2), any penalty imposed by the commissioner may not exceed one thousand dollars (\$1,000) a day, provided that the aggregate penalty of all offenses in any one action against any licensee or subsidiary of a licensee shall not exceed fifty thousand dollars (\$50,000).

(1) If the commissioner determines that any licensee or subsidiary of the licensee has recklessly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed five thousand dollars (\$5,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed seventy-five thousand dollars (\$75,000).

(2) If the commissioner determines that any licensee or subsidiary of the licensee has knowingly violated any applicable law, any order issued by the commissioner, any provision of any written agreement between the commissioner and the licensee or subsidiary, or any condition of any approval issued by the commissioner, the commissioner may impose a penalty not to exceed ten thousand dollars (\$10,000) per day, provided that the aggregate penalty of all offenses in an action against any licensee or subsidiary of a licensee shall not exceed 1 percent of the total assets of the licensee or subsidiary of a licensee subject to the penalty.

(c) Nothing in this section shall be construed to impair or impede the commissioner from pursuing any other administrative action allowed by law.

(d) Nothing in this section shall be construed to impair or impede the commissioner from bringing an action in court to enforce any law or order he or she has issued, including orders issued under this section. Nothing in this section shall be construed to impair or impede the commissioner from seeking any other damages or injunction allowed by law.

(e) In determining the amount and the appropriateness of initiating a civil money penalty under subdivision (b), the commissioner shall consider all of the following:

(1) Evidence that the violation or practice or breach of duty was intentional or was committed with a disregard of the law or with a disregard of the consequences to the institution.

(2) The duration and frequency of the violations, practices, or breaches of duties.

(3) The continuation of the violations, practices, or breaches of duty after the licensee or subsidiary of the licensee was notified, or, alternatively, its immediate cessation and correction.

- (4) The failure to cooperate with the commissioner in effecting early resolution of the problem.
- (5) Evidence of concealment of the violation, practice, or breach of duty or, alternatively, voluntary disclosure of the violation, practice, or breach of duty.
- (6) Any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of that harm.
- (7) Evidence that a licensee or subsidiary of a licensee received financial gain or other benefit as a result of the violation, practice, or breach of duty.
- (8) Evidence of any restitution paid by a licensee or subsidiary of a licensee of losses resulting from the violation, practice, or breach of duty.
- (9) History of prior violations, practices, or breaches of duty, particularly where they are similar to the actions under consideration.
- (10) Previous criticism of the institution for similar actions.
- (11) Presence or absence of a compliance program and its effectiveness.
- (12) Tendency to engage in violations of law, unsafe or unsound financial institutions practices, or breaches of duties.
- (13) The existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent the violation, practice, or breach of duty.
- (14) Whether the violation, practice, or breach of duty causes quantifiable, economic benefit or loss to the licensee or the subsidiary of the licensee. In those cases, removal of the benefit or recompense of the loss usually will be insufficient, by itself, to promote compliance with the applicable law, order, or written agreement. The penalty amount should reflect a remedial purpose and should provide a deterrent to future misconduct.
- (15) Other factors as the commissioner may, in his or her opinion, consider relevant to assessing the penalty or establishing the amount of the penalty.

(f) The amounts collected under this section shall be deposited in the appropriate fund of the department. For purposes of this subdivision, the term "appropriate fund" means the fund to which the annual assessments of fined licensees, or the parent licensee of the fined subsidiary, are credited.

SEC. 2. Section 331 of the Financial Code is amended to read:

331. The commissioner may adopt and implement any method of accepting electronic filings of applications, reports, or other matters, which, in the opinion of the commissioner, is secure. Any method of electronic filing chosen by the commissioner shall include a method to verify the identity of the person making the filing. The verification shall be deemed to satisfy all other verifications required by the commissioner, and shall have the same force and effect as the use of manual signatures.

SEC. 3. Section 331.5 is added to the Financial Code, to read:

331.5. (a) (1) A licensee subject to the commissioner's jurisdiction shall establish and maintain an electronic service address designated for receiving communications and documents that are sent by the commissioner to licensees. This electronic service address shall be provided to the commissioner upon licensure. The electronic service address provided to the commissioner shall not be the electronic service address of any individual employee. A licensee shall have the capacity to receive an attachment that accompanies a message sent to its electronic service address, provided the size of the attachment is reasonable in relation to the technology available at the time the attachment is sent.

(2) Prior to changing the electronic service address most recently provided to the commissioner, the licensee shall notify the commissioner of the change and provide to the commissioner his or her new electronic service address. The commissioner may impose a fine of up to fifty dollars (\$50) per day, not to exceed one thousand dollars (\$1,000) in the aggregate, on a licensee who fails to notify the commissioner before changing his or her electronic service address or fails to provide the commissioner a new electronic service address.

(3) The commissioner shall provide each licensee that establishes and maintains an electronic service address in accordance with this section with an electronic service address designated for receiving correspondence from licensees subject to the commissioner's jurisdiction. This service address shall have the capacity to receive an attachment that accompanies a message sent by the licensee, provided the size of the attachment is reasonable in relation to the technology available at the time the attachment is sent.

(b) A communication sent to an electronic service address established pursuant to this section does not satisfy any notice requirement, or displace any law or regulation, that requires notice to be served in a different manner, if a hearing right attaches to the notice.

SEC. 4. Section 583 of the Financial Code is amended to read:

583. (a) The commissioner shall make public on the department's Internet Web site all final orders issued pursuant to Sections 329, 567, 580, 581, 582, 585, 586, 587, 2148, 14303, 14304, 14305, 14307, 14308, 14309, 14310, 16200.5, 16900.5, 18349.5, 18356, 18357, 18358, 18359, 18363, 18367, and 18415.3 all decisions to modify or rescind an order pursuant to Sections 588, 14311, 16205, and 16905, all decisions to revoke or suspend a license pursuant to Sections 590, 591, 2149, 16202, 16203, 16902, 16903, 18349, and 18353, all decisions to revoke or suspend the designation of an agent pursuant to Sections 2150 and 2151, all decisions to approve resumption of business pursuant to Section 14314, and all decisions to take possession of the property and business of a licensee pursuant to Sections 592, 2149, 2150.2, 14313, 14315, 14319, 16206, 16906, 18415, and 18415.4. This public notice shall be in addition to the notice required pursuant to Section 594.

(b) If the commissioner makes a determination in writing that the publication of a final order or decision referenced in subdivision (a) 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.

(c) If the commissioner makes a determination that the publication of a final order or decision referenced in subdivision (a) 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.