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AB-2559 California Financing Law: enforcement and penalties. (2019-2020)

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Assembly Bill No. 2559

CHAPTER 160

An act to amend Sections 22706, 22707.5 and 22712 of the Financial Code, relating to financial institutions.

[Approved by Governor September 25, 2020. Filed with Secretary of State September 25, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2559, Bauer-Kahan. California Financing Law: enforcement and penalties.

(1) Existing law, the California Financing Law (CFL), generally provides for the licensure and regulation of finance lenders, brokers, and program administrators by the Commissioner of Business Oversight. The CFL authorizes the commissioner to require the attendance of witnesses and examine under oath, punishable under penalty of perjury, all persons whose testimony is required relative to the loans, assessment contracts, or businesses regulated under the CFL.

This bill would instead authorize the commissioner to require the attendance of witnesses and examine under oath all persons whose testimony relates to activities and businesses regulated under the CFL. By expanding the crime of perjury, the bill would impose a state-mandated local program.

(2) Existing law authorizes the commissioner, upon believing that a licensee or other person is violating the CFL, to issue a citation to the person and to assess an administrative fine for deposit into the State Corporations Fund. Existing law provides that a citation issued or a fine assessed is in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation and fine payment thereof by a licensee shall not be reported as disciplinary action taken by the commissioner.

This bill would delete the above language providing that the citation and fine payment by a licensee shall not be reported as disciplinary action by the commissioner. The bill would also authorize the commissioner to include a claim for ancillary relief, including refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act.

(3) The CFL authorizes the commissioner, after exhausting various disciplinary review procedures, to apply to the superior court for a judgment in the amount of the administrative fine and an order compelling the cited licensee or person to comply with the order of the commissioner. Existing law provides that the application, which is required to include a certified copy of the commissioner's final order, constitutes a sufficient showing to warrant issuance of the judgment and order.

This bill would revise the above provisions relating to this judicial procedure to require the application to include a certified copy of the final order to the commissioner, to require the superior court, upon the filing of the application, to set a date for a hearing for an order to show cause why judgment should not be entered, and would require the commissioner to serve a copy of the application and order to all entities or persons cited in the order, in accordance with specified timeframes. The bill would establish additional procedural requirements, including setting evidentiary standards, for these actions.

(4) Existing law authorizes the commissioner, upon determining a person is engaged in business as a finance lender, broker, program administrator, or mortgage loan originator without a license, to order that person or licensee to desist and refrain from engaging in the business or further continuing that violation.

This bill would authorize the commissioner, in the above circumstances, to include a claim for ancillary relief, as specified.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. Section 22706 of the Financial Code is amended to read:

22706. The commissioner may require the attendance of witnesses and examine under oath all persons whose testimony relates to activities and businesses regulated by this division or to the subject matter of any examination, investigation, or hearing.

SEC. 2. Section 22707.5 of the Financial Code is amended to read:

22707.5. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or other person is violating any provision of this division or any rule or order thereunder, the commissioner or their designee, may issue a citation to the licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. In addition, the commissioner may include a claim for ancillary relief. The ancillary relief may include, but not be limited to, refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. A citation issued or a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If, within 30 days from the receipt of the citation, the licensee or person cited fails to notify the department that they intend to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited licensee or person to comply with the order of the commissioner.

(1) The application shall include a certified copy of the final order of the commissioner.

(2) Upon the filing of the application, the superior court shall set a date for a hearing for an order to show cause why judgment should not be entered, which shall be set not less than 60 calendar days from the date the application is filed.

(3) The commissioner shall serve a copy of the application and order along with notice of the hearing to all entities or persons cited in the order against whom a civil judgment is sought not less than 15 calendar days before the date set for the hearing. Service of the application shall be pursuant to the methods specified by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure for service of summons.

(4) The court shall consider the filing of a certified copy of the final order of the commissioner and the proof of service of the application and notice of the hearing on the persons or entities against whom the judgment is sought, a sufficient prima facie showing to warrant the issuance of the civil judgment at the hearing. The respondent then has the burden of showing by

affirmative evidence at the hearing why the order of the commissioner is not final, or why the timely notice of application and hearing was not provided to avoid judgment being entered. Any method of service authorized by laws under which the order was issued is considered valid service for the purposes of determining whether the order is final. Absent this showing by the respondent, the superior court shall issue a final civil judgment compelling compliance with the order.

(5) The judgment issued pursuant to paragraph (4) may be for injunctive relief or payment of ancillary relief or penalties. The judgment may be enforced by the court pursuant to the procedures authorized for any other civil judgment.

(6) This subdivision shall not be construed to limit judicial review of any order of the commissioner in accordance with the law.

SEC. 3. Section 22712 of the Financial Code is amended to read:

22712. (a) Whenever, in the opinion of the commissioner, any person is engaged in business as a finance lender, broker, program administrator, or a mortgage loan originator, as defined in this division, without a license from the commissioner, or violates any provision of this division, any provision of an order, or any regulation adopted pursuant to this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further continuing that violation. In addition, the commissioner may include a claim for ancillary relief. The ancillary relief may include, but not be limited to, refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded. For purposes of this section, "licensee" includes a mortgage loan originator.

(b) Notwithstanding subdivision (a), if, after an investigation, the commissioner has reasonable grounds to believe that a person is conducting business in an unsafe or injurious manner, the commissioner shall, by written order addressed to that person, direct the discontinuance of the unsafe or injurious practices. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 22717.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.