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SB-577 Financial institutions: money transmission: escrow agents: lenders and brokers: banking. (2021-2022)

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Senate Bill No. 577

CHAPTER 16

An act to amend Sections 2105, 17202.1, 17414.1, and 80001 of, to add Section 22050.5 to, and to repeal Section 80002 of, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 28, 2022. Filed with Secretary of State April 28, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 577, Limón. Financial institutions: money transmission: escrow agents: lenders and brokers: banking.

(1) Existing law establishes the Department of Financial Protection and Innovation in the Business, Consumer Services, and Housing Agency, headed by the Commissioner of Financial Protection and Innovation. Under existing law, the commissioner and the department are charged with oversight and enforcement of various laws, including the Money Transmission Act.

Existing law, the Money Transmission Act, prohibits a person from engaging in the business of money transmission in this state, or advertising, soliciting, or holding out as providing money transmission in this state, unless the person is licensed or exempt from licensure, as specified. Existing law requires each licensee or agent to prominently post on the premises of each branch office that conducts money transmission a specified notice regarding how to contact the department.

This bill would update the department's contact information in that notice requirement.

(2) Existing law, the Escrow Law, provides for the licensing and regulation of escrow agents by the Commissioner of Financial Protection and Innovation and authorizes an applicant for an escrow agent's license or a licensee, in lieu of depositing a required bond, to deposit with the commissioner a cash bond that is evidenced, as specified.

The Escrow Law prohibits a person who has been convicted of or pleaded nolo contendere to specified crimes within the past 10 years, or who has been held liable in any civil action, as provided, within the past 7 years, from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, except as specified.

This bill would correct obsolete references in those provisions.

(3) Existing law, the California Financing Law, provides for the licensing and regulation of finance lenders, brokers, and specified program administrators by the commissioner. Until January 1, 2022, the California Financing Law exempted from its provisions a person who made only one loan, if it was a commercial loan, as defined, in a 12-month period.

This bill would reenact the above exemption for a person who makes no more than one loan in a 12-month period, if that loan is a commercial loan, as defined, and would make this provision remain operative indefinitely.

(4) Existing law establishes the Bank on California Program within the Department of Financial Protection and Innovation as a voluntary collaborative to assist Californians in opening bank or credit union accounts. Existing law requires the department to report annually to specified committees of the Legislature on the activities of the program.

This bill would repeal that annual reporting requirement.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 2105 of the Financial Code is amended to read:

2105. (a) Each licensee or agent shall prominently post on the premises of each branch office that conducts money transmission a notice stating that:

"If you have complaints with respect to any aspect of the money transmission activities conducted at this location, you may contact the California Department of Financial Protection and Innovation at its toll-free telephone number, 1-866-275-2677, by email at consumer.services@dfpi.ca.gov, or by mail at the Department of Financial Protection and Innovation, Consumer Services, 2101 Arena Boulevard, Sacramento, CA 95834."

(b) The commissioner may by order or regulation modify the content of the notice required by this section. This notice shall be printed in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate either orally or in writing, with respect to money transmission at that branch office. The information required in this notice shall be clear, legible, and in letters not less than one-half inch in height. The notice shall be posted in a conspicuous location in the unobstructed view of the public within the premises. The licensee shall provide to each of its agents the notice required by this section. In those locations operated by an agent, the agent, and not the licensee, shall be responsible for the failure to properly post the required notice.

(c) In the event that a licensee or agent conducts money transmission activity via an internet website or a mobile application that is not in a branch office, the commissioner may authorize an alternative form of the notice required in subdivision (a).

SEC. 2. Section 17202.1 of the Financial Code is amended to read:

17202.1. An applicant for an escrow agent's license or a licensee may, in lieu of and subject to the same conditions as the bond required by Section 17202, deposit with the commissioner a cash bond in the sum specified in Section 17202. Evidence of the cash bond shall be a deposit in the amount specified in Section 17202 in a bank or investment certificates of industrial loan companies, authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or an investment certificate or share account in the amount specified in Section 17202 issued by a savings and loan association doing business in this state and insured by the Federal Deposit Insurance Corporation. Those deposits, certificates, or accounts shall be assigned to and accepted and maintained by the commissioner, upon those terms as the commissioner may prescribe, until released by the commissioner, and shall not be deemed an asset of the applicant or licensee for the purpose of complying with Section 17210.

SEC. 3. Section 17414.1 of the Financial Code is amended to read:

17414.1. (a) Any person who has been convicted of or pleaded nolo contendere to any crime specified in subdivision (b) within the past 10 years, or has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years, of any of the provisions specified in subdivision (b), shall not serve in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, in this state. This subdivision shall not apply to any person whose office, employment, ownership interest, or other participation in the business of a licensed escrow agent commenced prior to January 1, 1992.

(b) Subdivision (a) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for offenses including the following:

- (1) Offenses specified in Chapter 10 (commencing with Section 1320) of Division 1.1.
- (2) Offenses specified in Article 4 (commencing with Section 5300) of Chapter 1 of Division 2.
- (3) Offenses specified in Article 8 (commencing with Section 14750) of Chapter 4 of Division 5.
- (4) Offenses specified in Chapter 3 (commencing with Section 17400), and Chapter 7 (commencing with Section 17700) of Division 6.
- (5) Offenses specified in Chapter 6 (commencing with Section 18435) of Division 7.
- (6) Offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Public Law 101-73).
- (7) Offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, controlled substances, extortion, checks, credit cards, or computer violations specified in Section 502 of the Penal Code.

For the purpose of this section, but not Section 17423, an offense does not include a conviction for which the person has obtained a certificate of rehabilitation from a court of competent jurisdiction under Section 1203.4 or 4852.13 of the Penal Code or a similar certificate of rehabilitation obtained in a foreign jurisdiction.

(c) On and after January 1, 1992, any person who seeks employment by, or an ownership interest in, or other participation in the business of a licensed escrow agent shall, as a condition to obtaining that employment, interest, or participation, authorize Fidelity Corporation and the commissioner, or both, to have access to that person's state and federal summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of, or pleaded nolo contendere to, a criminal offense specified in subdivision (b).

(d) On or before the 10th day of employment, each escrow agent shall obtain and forward to the commissioner the fingerprint images and related information of persons seeking employment by an escrow agent. The fingerprint images and related information may be submitted by certified mail, return receipt requested, or transmitted electronically, using the process established by the Department of Justice for requesting state and federal summary criminal history information. Persons who have previously submitted fingerprints or fingerprint images and related information to the commissioner may so notify the commissioner and need not submit additional fingerprint images and related information unless requested to do so by the commissioner. The commissioner shall provide written notice to both the escrow agent and to the person if any of the information received pursuant to this division shows that the person's employment would be in violation of Section 17414.1, and the escrow agent shall deny the person the employment. No person whose employment is in violation of subdivision (a) shall have access to trust funds or sign checks or otherwise perform any activities related to the processing of escrow transactions after the licensed escrow agent has been notified by the commissioner that the person's employment is in violation of subdivision (a).

(e) Any state and federal summary criminal history information obtained pursuant to this section shall be kept confidential and no recipient shall disclose the contents other than for the purpose of determining eligibility for employment by, or acquisition of an ownership interest in, or other participation in the business of a licensed escrow agent.

(f) The authority granted by this section to the commissioner or to Fidelity Corporation shall be in addition to any other authority granted by law to obtain information about any person who is subject to this division. Nothing in this section shall be construed to limit any authority of the commissioner or Fidelity Corporation otherwise provided by law.

(g) Any person who knowingly violates subdivision (a) or (d), including, but not limited to, any escrow agent who permits employment by, or an ownership interest in, or other participation in the business of an escrow agent in violation of subdivision (a) or (d) shall, upon conviction, be subject to punishment as set forth in Section 17700. Any person who knows of a violation of subdivision (a) or (d) shall immediately report the violation in writing to the commissioner. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

(h) Nothing in this section shall be construed to permit the reinstatement of any person barred by the commissioner pursuant to Section 17423 nor to prohibit the commissioner from bringing any action pursuant to Section 17423.

(i) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to

this end the provisions of this section are severable.

SEC. 4. Section 22050.5 is added to the Financial Code, to read:

22050.5. This division does not apply to any person who makes no more than one loan in a 12-month period if that loan is a commercial loan as defined in Section 22502.

SEC. 5. Section 80001 of the Financial Code is amended to read:

80001. For purposes of this division, the following terms shall have the following meanings:

(a) "Department" means the Department of Financial Protection and Innovation.

(b) "Program" means the Bank on California Program.

SEC. 6. Section 80002 of the Financial Code is repealed.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

Certain complex financial transactions governed by the California Financing Law, including those falling within an exception from that law, will be subject to further delays if this act does not take effect immediately. Moreover, delays in those transactions also cause delays in the economic activity associated with those transactions, putting further strain on supply chains that are currently stressed by the effects of the COVID-19 pandemic. To further avoid constraining capacity in supply chains and to protect the people and business transactions in this state, it is necessary for this act to take effect immediately.