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AB-1312 Financial transactions. (2023-2024)

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Assembly Bill No. 1312

CHAPTER 100

An act to amend Section 1788.18 of the Civil Code, and to amend Sections 1674 and 22169 of the Financial Code, relating to financial transactions.

[Approved by Governor July 21, 2023. Filed with Secretary of State July 21, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1312, Committee on Banking and Finance. Financial transactions.

Existing law, the California Financing Law, prohibits a person from engaging in the business of a finance lender or broker without obtaining a license from the Commissioner of Financial Protection and Innovation. The law authorizes the commissioner to censure or suspend a person from any position of employment with, or management control of, any finance lender, broker, program administrator, or any other person, if the commissioner makes specified findings. The law authorizes a person to request a hearing within 15 days from the date of a notice of intention to issue an order pursuant to those provisions.

Existing law, the Banking Law, provides for the regulation of foreign (other state) banks that maintain a facility or branch office in California by the Department of Financial Protection and Innovation. The law requires these banks to pay fees to the Commissioner of Financial Protection and Innovation, as specified.

Existing law, the Rosenthal Fair Debt Collection Practices Act, prohibits debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts. The act requires a debt collector to cease collection activities until completion of a specified review upon receipt from the debtor of specified documents, including the debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector. The act requires the debt collector to take specified actions within 10 business days of receiving these documents. The act requires that statement to consist of specified information, including a specified certification. The act requires a debt collector to provide specified information to a debtor who notifies the debt collector orally that they are a victim of identity theft, and to a debtor who notifies a debt collector in writing that they are a victim of identity theft that omits specified information.

This bill would make technical changes to these provisions.

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

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

SECTION 1. Section 1788.18 of the Civil Code is amended to read:

1788.18. (a) Upon receipt from a debtor of all of the following, a debt collector shall cease collection activities until completion of the review provided in subdivision (d):

(1) A copy of a Federal Trade Commission (FTC) identity theft report, completed and signed by the debtor. The debtor may choose, instead, to send a copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt being collected by the debt collector; however, the debt collector shall not also require a police report if the debtor submits an FTC identity theft report.

(2) The debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.

(b) The written statement described in paragraph (2) of subdivision (a) shall consist of any of the following:

(1) A written statement that contains the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection.

(2) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter pursuant to this subdivision that they know to be false is guilty of a misdemeanor. The statement shall contain or be accompanied by the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor's driver's license or identification card, as issued by the state.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred.

(H) A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.

(I) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.

(J) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

(K) The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form:

"I certify the representations made are true, correct, and contain no material omissions of fact.

_____ (Date and Place) _____ (Signature) _____ "

(c) If a debtor notifies a debt collector orally that they are a victim of identity theft, the debt collector shall notify the debtor, orally or in writing, that the debtor's claim must be in writing. If a debtor notifies a debt collector in writing that they are a victim of identity theft, but omits information required pursuant to subdivision (a) or, if applicable, the certification required pursuant to paragraph (2) of subdivision (b), if the debt collector does not cease collection activities, the debt collector shall provide written notice to the debtor of the additional information that is required, or the certification required pursuant to paragraph (2) of subdivision (b), as applicable, or send the debtor a copy of the Federal Trade Commission's identity theft form.

(d) Within 10 business days of receiving the complete statement and information described in subdivision (a), the debt collector shall, if it furnished adverse information about the debtor to a consumer credit reporting agency, notify the consumer credit reporting agency that the account is disputed, and initiate a review considering all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor. The debt collector shall send notice of its determination to the debtor no later than 10 business days after concluding the review. The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector's determination shall be made in a manner consistent with the

provisions of subsection (1) of Section 1692f of Title 15 of the United States Code, as incorporated by Section 1788.17 of this code. The debt collector shall notify the debtor in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's determination shall be based on all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.

(e) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the debt collector decides after the review described in subdivision (d) to cease or recommence the debt collection activities. The exercise or nonexercise of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.

(f) The statement and supporting documents that comply with subdivision (a) may also satisfy, to the extent those documents meet the requirements of, the notice requirement of paragraph (5) of subdivision (c) of Section 1798.93.

(g) A debt collector who ceases collection activities under this section and does not recommence those collection activities shall do all of the following:

(1) If the debt collector has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information no later than 10 business days after making its determination.

(2) Notify the creditor no later than 10 business days after making its determination that debt collection activities have been terminated based upon the debtor's claim of identity theft.

(h) A debt collector who has possession of documents that the debtor is entitled to request from a creditor pursuant to Section 530.8 of the Penal Code is authorized to provide those documents to the debtor.

(i) Notwithstanding subdivision (h) of Section 1788.2, for the purposes of this section, "debtor" means a natural person, firm, association, organization, partnership, business trust, company, corporation, or limited liability company from which a debt collector seeks to collect a debt that is due and owing or alleged to be due and owing from the person or entity. The remedies provided by this title shall apply equally to violations of this section.

SEC. 2. Section 1674 of the Financial Code is amended to read:

1674. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank for approval to establish a facility is two hundred fifty dollars (\$250).

(b) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank that is licensed pursuant to Article 4 (commencing with Section 1710) to maintain a facility for approval to relocate or to close the facility is one hundred dollars (\$100).

(c) The fee for issuing a license pursuant to Article 4 (commencing with Section 1710) is twenty-five dollars (\$25).

(d) Each foreign (other state) state bank that on June 1 of any year maintains one or more California branch offices shall pay, on or before the following July 1, a fee of one thousand dollars (\$1,000) per California branch office. However, the minimum fee paid by a foreign (other state) state bank under this subdivision shall be not less than three thousand dollars (\$3,000) and the maximum fee shall be not more than fifty thousand dollars (\$50,000).

(e) Each foreign (other state) bank that on June 1 of any year maintains a facility but no California branch office shall pay, on or before the following July 1, a fee of two hundred fifty dollars (\$250) for each facility.

(f) If the commissioner makes an examination in connection with a pending application, as described in subdivision (a) or (b), the applicant shall pay a fee for the examination of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) If the commissioner makes an examination of a foreign (other state) state bank that maintains a California branch office, the bank shall pay a fee for the examination of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) If the commissioner makes an examination of a facility of an uninsured foreign (other state) bank licensed under Article 4 (commencing with Section 1710), the bank shall pay a fee for the examination of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(i) If the commissioner makes an examination of a facility of an insured foreign (other state) bank that does not maintain a California branch office, the bank shall pay a fee for the examination of seventy-five dollars (\$75) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 3. Section 22169 of the Financial Code is amended to read:

22169. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar a person, including a mortgage loan originator, from any position of employment with, or management or control of, any finance lender, broker, program administrator, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the finance lender, broker, program administrator, or mortgage loan originator, or to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under the law.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a finance lender, broker, program administrator, or mortgage loan originator, and from engaging in any business activity on the premises where a finance lender, broker, program administrator, or mortgage loan originator is conducting business.

(e) This section shall become operative on January 1, 2019.