
**SENATE COMMITTEE ON
BANKING AND FINANCIAL INSTITUTIONS**
Senator Steven Bradford, Chair
2019 - 2020 Regular

Bill No: AB 2559 **Hearing Date:** August 13, 2020
Author: Bauer-Kahan
Version: August 4, 2020 Amended
Urgency: No **Fiscal:** Yes
Consultant: Eileen Newhall

Subject: California Financing Law: enforcement and penalties.

SUMMARY This bill increases the enforcement authority of the Department of Business Oversight (DBO) under the California Financing Law (CFL), as specified.

EXISTING LAW

- 1) Provides for the California Financing Law (CFL; Financial Code Section 22000 et seq.), administered by the Department of Business Oversight (DBO), which regulates the making and brokering of secured and unsecured, consumer-purpose and commercial-purpose loans by non-depository institutions and the origination of Property Assessed Clean Energy assessment contracts, as specified. The CFL:
 - a) Authorizes the Commissioner of DBO (commissioner) to require the attendance of witnesses and examine under oath all persons whose testimony he or she requires related to loans, assessment contracts, or business regulated by the CFL or to the subject matter of any examination, investigation, or hearing (Financial Code Section 22706).
 - b) Authorizes the commissioner to issue a citation and assess an administrative fine not to exceed \$2500 if, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or other person is violating any provision of the CFL or any rule or order issued pursuant to the CFL. Clarifies that a citation issued or a fine assessed pursuant to this authority, while constituting punishment for a violation of law, is in lieu of other administrative discipline by the commissioner for the offense or offenses, and may not be reported as a disciplinary action taken by the commissioner (Financial Code Section 22707.5).
 - c) Provides that, after the exhaustion of Administrative Procedures Act (APA; Chapter 2 of Part 2 of Division 3 of Title 2 of the Government Code, commencing with Section 11500) appeal rights in connection with a citation and fine, 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 person to comply with the commissioner's order. Further provides that the application to the court, which must include a certified copy of the final order of the commissioner, constitutes a sufficient showing to warrant the issuance of the judgment and order (Financial Code Section 22707.5).

- d) Authorizes the commissioner to issue a desist and refrain order (D&R) to a licensee or a person required to be licensed under the CFL, who, in the opinion of the commissioner, violates the CFL or any rule or order issued pursuant to the CFL. Provides that persons issued a D&R are entitled to appeal rights pursuant to the APA, as specified (Financial Code Section 22712).
- e) Provides that, whenever the commissioner believes that any person has violated or is about to violate a provision of the CFL or any order, license, decision, demand, requirement, or regulation adopted pursuant to the CFL, the commissioner may bring an action or request that the Attorney General bring an action to enjoin that person from continuing the violation. Authorizes the commissioner to include a claim for ancillary relief as part of the aforementioned action (Financial Code Section 22713).

THIS BILL

- 1) Makes technical changes to the provision of law authorizing the commissioner to require the attendance of witnesses and examine persons under oath by clarifying that this authority applies to all persons whose testimony relates to activities and businesses regulated by the CFL or to the subject matter of any examination investigation, or hearing.
- 2) Authorizes the commissioner to include a claim of ancillary relief as part of a citation and fine. The ancillary relief may include, but need 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.
- 3) Allows the commissioner to categorize citations and fines as disciplinary actions.
- 4) Authorizes the commissioner to include a claim of ancillary relief as part of a D&R. The ancillary relief may include, but need 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.
- 5) Adds specificity to the procedures that a court must follow when the commissioner applies to a court for a judgment in the amount of the administrative fine and an order compelling the person cited to comply with the commissioner's order and places additional requirements on persons to whom a citation and fine is issued, who wish to challenge the issuance of a judgment and order by the court. Clarifies, however, that these procedures and requirements shall not be construed to limit judicial review of any order of the commissioner
 - a) Requires the court to set a date for a hearing at least 60 calendar days from the date the commissioner's application is filed, and requires the commissioner to serve a copy of the application and order along with notice of the hearing to all entities or persons cited in the order at least 15 days before the hearing.
 - b) Requires the court to consider the commissioner's filing of a certified copy of the final order and proof of service of the hearing as prima facie evidence to warrant the issuance of the civil judgment. Places the burden on a respondent to show

by affirmative evidence that the order is not final or that the respondent was not served with timely notice of the hearing. Requires the court to issue a final civil judgment compelling compliance with the order if the respondent fails to meet his or her burden.

COMMENTS

- 1) Purpose: This bill is sponsored by the author to increase consumer protection under the CFL.
- 2) Background: This bill includes changes that DBO requested to SB 472 (Caballero) during 2019, when the department provided technical assistance to Senator Caballero on that measure. The amendments were not included in SB 472, because they did not relate directly to the subject matter of that bill. Including them in a separate bill, as this bill's author has chosen to do, allows them to be considered independently on their merits.
- 3) Discussion: The substantive provisions of this bill have three goals: a) make it easier for DBO to order persons found to have violated the CFL to pay restitution or provide other ancillary relief to consumers harmed as a result of the person's violation(s), b) make it easier for DBO to obtain civil judgments and court orders in connection with citations and fines, and c) allow citations and fines to be considered disciplinary actions. All of these changes are designed to strengthen DBO's ability to enforce the CFL in a manner that promotes consumer protection.

Under existing law, DBO is only able to obtain ancillary relief for consumers if it files a civil action pursuant to Financial Code Section 22713 or if it enters into a settlement agreement with a person the department alleges has violated the CFL. This bill would allow DBO to include orders of ancillary relief as part of two types of administrative actions (citations and desist and refrain orders).

- 4) Parallel Amendments May Be Warranted to the California Residential Mortgage Lending Act (CRMLA): The citation and fine authority that this bill would modify was added to both the CFL and the CRMLA in 2013 (AB 1091, Skinner, Chapter 243, Statutes of 2013). AB 2559 proposes to modify the CFL provisions to allow citations and fines to be considered discipline and to authorize DBO to order a cited entity to pay ancillary relief to wronged consumers. Although amendments to the CRMLA are beyond the scope of AB 2559, there may be value in making parallel amendments to the CRMLA in a future year to increase consumer protection under that law, as well.
- 5) Input from Senate Judiciary Committee Staff: Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate policy committees are working under a compressed timeline. This timeline does not allow this bill to be referred to and heard by more than one committee, as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes the following information from Senate Judiciary Committee staff: "This bill raises various issues within the jurisdiction of the Senate Judiciary Committee, including civil procedure, consumer protection, and the enforcement of judgments through the courts. The Senate Judiciary Committee

has historically tended to favor bills that strengthen consumer protections and bills that provide for the efficient administration of cases in the courts while ensuring appropriate due process is afforded to parties involved. In light of the COVID-19 pandemic, the Legislature may wish to consider whether requiring a hearing to be set within 60 days of the filing of an application will place undue burdens on the courts.”

6) Support: The California Low-Income Consumer Coalition (CLICC), Housing and Economic Rights Advocates (HERA), and Consumer Action support the bill for similar reasons. HERA writes, “this bill will increase DBO efficiency. Currently, for a consumer to be able to access restitution, there needs to be a civil lawsuit filed. The lawsuits are filed after the administrative hearing where a violation is found. The arguments made in the civil suit duplicate those in the administrative hearing. By allowing the DBO to collect restitution after the administrative finding of a violation, consumers can be made whole sooner and without wasting DBO resources re-litigating points in a civil suit.”

7) Opposition: None received

8) Prior and Related Legislation:

a) AB 1091 (Skinner), Chapter 243, Statutes of 2013, among its provisions, added citation and fine authority to the CFL and the California Residential Mortgage Lending Act.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

California Low-Income Consumer Coalition
Consumer Action
Housing and Economic Rights Advocates

Opposition

None received

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