SENATE THIRD READING
SB 825 (Limón and Grayson)
As Amended March 24, 2025
Majority vote

SUMMARY

This bill provides the Department of Financial Protection and Innovation (DFPI) independent enforcement authority for unfair, deceptive, and abusive acts and practices by licensees otherwise exempt from the California Consumer Financial Protection Law (CCFPL).

Major Provisions

Provides that persons exempted from the California Consumer Financial Protection Law are not exempt from the authority of the commissioner of the DFPI when they are engaged in unfair, deceptive or abusive acts or practices (UDAAP) with respect to consumer financial services or products.

COMMENTS

The Current State of Law:

Exempted Licensees: The following categories of persons are exempt from the CCFPL: 1) Licensees of state agencies other than DFPI to the extent that such entities are acting under the authority of the other state agency's license; 2) specified categories of licensees of DFPI, including, but not limited to, banks, credit unions, residential mortgage lenders, finance lenders, and money transmitters; 3) banks, credit unions, and other financial institutions acting under the authority of a license, certificate, or charter under federal law or the laws of another state. (Fin. Code Section 90002)

DFPI existing state authority over exempted licensees: The DFPI has different enforcement authority across different licensing frameworks that govern the various exempted persons. This results in different triggering violations and enforcement procedures and outcomes for different licensees who commit the same harm to consumers. Thus, bad actors in the financial sector who commit the same UDAAP violations may enjoy a lower penalty or less rigorous enforcement procedure simply based on the type of business it is, not the act it committed. In addition to asymmetrical policy, this also requires a more vast knowledge of enforcement procedure among DFPI staff. Under these licensing regimes, the process is administrative, with a progressive written disciplinary procedural structure before imposing fees which are often capped instead of floored or given in a range. Remedies available under the licenses for all exempted licensees include ancillary relief such as disgorgement, restitution to victims, actual damages, or equitable relief, such as an injunction or license suspension. Each license framework requires criminal intent-level action to trigger discipline.

DFPI existing UDAAP authority through federal statute: Currently, the DFPI may pursue UDAAP claims against exempted persons using the federal Consumer Financial Protection Act (CFPA), however, it must first consult with the Consumer Financial Protection Bureau (CFPB) in order to do so. The CFPB may respond in several ways, but most germane to the present issue, it may remove the action to another jurisdiction or appeal any order or judgment to the same extent as any other party in the proceeding. The course of action that the CFPB may take is discretionary, and consideration for the costs and interest of Californians is not required. In the event that CFPB were to respond with a removal or an appeal to an action as a party, the outcome could be detrimental to public policy, and the lengthy court process would be extremely costly to the state.

Existing state UDAAP authority over exempted licensees: The state Attorney General, district attorneys, some county counsel, or some city attorney already have authority to utilize Business and Professions Code Chapter 4, the Unfair Trade Practices Act, commonly referred to as Unfair Competition Law or UCL. Unlike the federal CFPA Dodd-Frank standards, "unfair" and "deceptive" under the UCL are determined through case law, while "abusive" generally shares the standard used federally. Thus exempted entities are already subject to UDAAP laws in California through different enforcement agencies.

DFPI's existing remedies under the CCFPL: The CCFPL remedies are victim-centered as well as statutorily deterrent. In addition to the ancillary relief described in the existing licensing framework, the CCFPL enforcement power is buildable based on the action and willfulness of the actor. The DFPI is required to take into account provided mitigating factors when pursuing relief.

This Bill: This bill will provide the DFPI, which already oversees CCFPL exempted licensees, with the authority to enforce California's existing UDAAP laws independent of a federal pathway.

According to the Author
"With recent changes to the Consumer Financial Protection Bureau, the sole federal agency tasked with enforcement of consumer financial protection laws, consumers will be left with less protections and fewer resources to help them navigate the financial marketplace. SB 825 authorizes DFPI to enforce state consumer financial protection laws over entities they currently regulate, including state banks, state credit unions, independent mortgage companies, nonbank lenders, and payment service providers."

Arguments in Support
The Consumer Federation of California, California Low-Income Consumer Coalition, National Consumer Law Center, and the Center for Responsible Lending write, as co-sponsors:

"This straightforward bill authorizes DFPI to enforce state consumer financial protection laws such as the CCFPL over entities they currently regulate, including state-chartered banks, state chartered credit unions, independent mortgage companies, nonbank lenders, and payment service providers.

The bill is needed to bring basic parity to California's regulation of financial products and services. It is simply unfair for the DFPI to have broad enforcement authority against non-licensed providers of financial products and services but not to have that authority against licensed entities that, in many cases, directly compete with non-licensed entities. In addition, consumers are left vulnerable if the DFPI does not have its broadest enforcement authority against the large swaths of the marketplace that are licensed by the DFPI.

Indeed, clear and effective DFPI enforcement authority is more important than ever. In the aftermath of the Great Recession of 2008, when some 10 million Americans lost their homes, Congress created the federal consumer protection watchdog that had been so conspicuously absent in the years leading up to the mortgage crisis: the Consumer Financial Protection Bureau

(CFPB). Through oversight, regulation, and especially enforcement, since its founding in 2011 the CFPB helped stabilize the housing market, create a level playing field within financial markets — and return more than $21 billion dollars to consumers.

Unfortunately, the incoming federal administration has moved to shut down, or otherwise dismantle, the CFPB. California therefore needs to act, right now, to protect consumers and to safeguard honest businesses."

Arguments in Opposition
A coalition representing banks, credit unions, mortgage lenders, and other nonbank lenders writes:

"As enacted in 2020, the CCFPL exempts from its scope DFPI licensees and those licensed or registered by other state or federal agencies, because the new program was intended to target new, emerging financial product and service providers entering the California marketplace that were not regulated under the DFPI's existing licensing laws. The new Consumer Financial Protection Division was established within the Department to register and supervise those previously unregulated "covered persons."

SB 825 upends the compromise reached in 2020 that resulted in passage of the California Consumer Financial Protection Law. We believe now, as we did then, that expanding the DFPI's authority to enforce UDAAP claims is unnecessary and redundant of both the existing authority of the Attorney General and the Department's own enforcement powers with respect to its licensees. The Department has existing authority alone, or in concert with the Attorney General, to discipline licensees for unfair practices. Further, this new authority will necessarily stretch limited Department resources and compound its current fiscal challenges - again with no clear showing as to why existing state enforcement powers are inadequate."

FISCAL COMMENTS

Absorbable costs to DFPI.

VOTES

SENATE FLOOR: 28-10-2
YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener
NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares
ABS, ABST OR NV: Hurtado, Reyes

ASM BANKING AND FINANCE: 7-1-1
YES: Valencia, Fong, Krell, Michelle Rodriguez, Blanca Rubio, Schiavo, Soria
NO: Dixon
ABS, ABST OR NV: Chen

ASM APPROPRIATIONS: 11-4-0
YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache
NO: Dixon, Jeff Gonzalez, Ta, Tangipa

UPDATED

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