

**Assembly Bill No. 1864**

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Passed the Assembly August 31, 2020

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*Chief Clerk of the Assembly*

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Passed the Senate August 31, 2020

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2020, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 300, 320, 321, 326, and 351 of, to add Division 24 (commencing with Section 90000) to, and to repeal Section 371 of, the Financial Code, and to amend Section 11041 of the Government Code, relating to financial institutions.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1864, Limón. Financial institutions: regulation: Department of Financial Protection and Innovation.

(1) Existing law establishes the Department of Business Oversight in the Business, Consumer Services, and Housing Agency, headed by the Commissioner of Business Oversight. Under existing law, the department has charge of the execution of specified laws relating to various financial institutions and financial services, including banks, trust companies, credit unions, finance lenders, and residential mortgage lenders.

This bill would rename the “Department of Business Oversight” as the “Department of Financial Protection and Innovation,” which would be charged with execution of the above-specified laws. The bill would also put this department in charge of various other laws relating to providing financial products and services in this state. The bill would rename the commissioner of the department as the “Commissioner of Financial Protection and Innovation.” The bill would specify that upon the operative date of its provisions, the powers, duties, responsibilities, and functions of the former Commissioner of Business Oversight and the Department of Business Oversight would become those of the Commissioner of Financial Protection and Innovation (commissioner) and the Department of Financial Protection and Innovation (department), respectively. The bill would require the commissioner and department to retain all of the rights, properties, debts, and liabilities of the former commissioner and department and would specify that the change of name does not affect the validity of actions, proceedings, permits, or other actions taken previously.

This bill would enact the California Consumer Financial Protection Law (CCFPL) to strengthen consumer protections by expanding the ability of the department to improve accountability

and transparency in the California financial system and promote nondiscriminatory access to responsible, affordable credit, among other purposes. The bill would require the department to regulate the provision of various consumer financial products or services and to exercise nonexclusive oversight and enforcement authority under California consumer financial laws and, to the extent permissible, under the federal consumer financial laws. The bill would make it unlawful for covered persons or service providers, as defined, to, among other acts, engage in unlawful, unfair, deceptive, or abusive acts or practices with respect to consumer financial products or services, or offer or provide a consumer a financial product or service that is not in conformity with any consumer financial law.

The bill would grant the department, among other duties, the power to bring administrative and civil actions, issue subpoenas, promulgate regulations, hold hearings, issue publications, conduct investigations, and implement outreach and education programs. The bill would also require the department to promulgate specified regulations and to promulgate rules regarding registration requirements applicable to a covered person within certain timeframes and subject to specified conditions. The bill would require the Legislature to conduct public hearings to obtain input on feasibility, and would require the commissioner to annually appear before and present information on enforcement actions and various other activities under the CCFPL to the appropriate legislative committees. The bill would further require the department to establish the Financial Technology Innovation Office, as specified.

This bill would require all moneys collected or received by the commissioner under the CCFPL to be deposited with the State Treasurer to the credit of the Financial Protection Fund, which the bill would create, for the administration of the CCFPL. Moneys in those funds would consist of fees, fines, penalties, and other moneys received. All moneys in the fund would be available, upon appropriation by the Legislature, for purposes of the CCFPL. The bill would authorize the department to set and collect a reasonable annual registration fee for each entity required to register under this law and to take action against persons who engage in unfair, deceptive, or abusive practices with respect to consumer financial products or services.

The bill would require covered persons and service providers to file certain documents, under oath, with the department. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would also impose specific civil and monetary penalties for violations of the CCFPL, as well as injunctive relief. The bill would require administrative procedures under the act to be conducted in accordance with the provisions of the Administrative Procedure Act and would authorize the department to enter into agreements with the Attorney General regarding coordinating civil and investigatory actions among these agencies. The bill would also require the commissioner to prepare and publish on its internet website an annual report containing specified information.

(2) Existing law generally prohibits state agencies from employing in-house counsel to act on behalf of the agency or its employees in judicial or administrative adjudicative proceedings but exempts specified agencies from this provision, including the Regents of the University of California and the Trustees of the California State University.

This bill would exempt the Department of Financial Protection and Innovation from that provision.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(4) 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.

*The people of the State of California do enact as follows:*

SECTION 1. Section 300 of the Financial Code is amended to read:

300. (a) In this section:

(1) “Business and industrial development corporation” means a corporation licensed under Division 15 (commencing with Section 31000).

(2) “Payment instrument” has the same meaning as set forth in Section 2003.

(3) “Stored Value” has the same meaning as set forth in subdivision (x) of Section 2003.

(b) There is in the state government, in the Business, Consumer Services, and Housing Agency, a Department of Financial Protection and Innovation, which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) persons who engage in the business of receiving money for transmission or such business; (5) issuers of stored value or such business; (6) issuers of payment instruments or the payment instrument business; (7) business and industrial development corporations or the business and industrial development corporation business; (8) insurance premium finance agencies or the insurance premium finance business; (9) persons offering or making any contract constituting bucketing; (10) persons offering or selling off-exchange commodities; (11) deferred deposit originators; (12) finance lenders and brokers; (13) residential mortgage lenders and servicers; (14) capital access companies; (15) check sellers, bill payers, and proraters; (16) securities issuers, broker-dealers, agents, investment advisers, and investment adviser representatives; (17) mortgage loan originators employed or supervised by finance lenders or residential mortgage lenders; (18) escrow agents; (19) franchisors; (20) persons holding securities as custodians on behalf of securities owners; (21) persons offering or providing consumer financial products or services in this state; and (22) PACE program administrators.

SEC. 2. Section 320 of the Financial Code is amended to read:

320. (a) The chief officer of the Department of Financial Protection and Innovation is the Commissioner of Financial Protection and Innovation. The Commissioner of Financial Protection and Innovation is the head of the department with the authority and responsibility over all officers, employees, and activities in the department and, except as otherwise provided in

this code and the Corporations Code, is subject to the provisions of the Government Code relating to department heads.

(b) The Commissioner of Financial Protection and Innovation shall employ legal counsel to act as the attorney for the commissioner in actions or proceedings brought by or against the commissioner under or pursuant to any law under the jurisdiction of the Department of Financial Protection and Innovation, or in which the commissioner joins or intervenes as to a matter within the jurisdiction of the Department of Financial Protection and Innovation, as a friend of the court or otherwise.

(c) The Commissioner of Financial Protection and Innovation shall employ stenographic reporters to take and transcribe the testimony in any formal hearing or investigation before the commissioner or before a person authorized by the commissioner.

(d) Sections 11040 and 11042 of the Government Code do not apply to the Department of Financial Protection and Innovation.

SEC. 3. Section 321 of the Financial Code is amended to read:

321. (a) In this section, “order” means any approval, consent, authorization, exemption, denial, prohibition, requirement, or other administrative action, applicable to a specific case.

(b) Upon the operative date of this section, as amended during the 2019–20 legislative session, the office of the Commissioner of Business Oversight and the Department of Business Oversight shall be renamed the office of the Commissioner of Financial Protection and Innovation and the Department of Financial Protection and Innovation. All powers, duties, responsibilities, and functions of the Commissioner of Business Oversight and the Department of Business Oversight shall be the powers, duties, responsibilities, and functions of the Commissioner of Financial Protection and Innovation and the Department of Financial Protection and Innovation, respectively. The Commissioner of Financial Protection and Innovation and the Department of Financial Protection and Innovation shall retain all of the rights, property, debts, and liability of the Commissioner of Business Oversight and the Department of Business Oversight, respectively. The change of name shall not affect the validity of any action or proceeding by or against the Commissioner of Business Oversight or the Department of Business Oversight, or a predecessor commissioner or department, nor the validity of any permit, certificate, license, or any other action taken under the name of

the Commissioner of Business Oversight or the Department of Business Oversight, or a predecessor commissioner or department. All agreements entered into with, and orders and regulations issued by, the Commissioner of Business Oversight or the Department of Business Oversight, or a predecessor commissioner or department, shall continue in effect as agreements, orders, and regulations of the Commissioner of Financial Protection and Innovation or the Department of Financial Protection and Innovation. References in the California Constitution or in any statute or regulation to the Superintendent of Banks or the Commissioner of Financial Institutions or the Commissioner of Corporations or the Commissioner of Business Oversight or to the State Banking Department or the Department of Financial Institutions or the Department of Corporations or the Department of Business Oversight mean the Commissioner of Financial Protection and Innovation or the Department of Financial Protection and Innovation, respectively.

(c) (1) The name change of the Department of Business Oversight to the Department of Financial Protection and Innovation shall not result in any change to the status or authority of the department.

(2) (A) All appointments by the Governor to the Department of Business Oversight shall continue as appointments to the Department of Financial Protection and Innovation.

(B) The confirmation by the Senate of the Commissioner and Senior Deputy Commissioner of Business Oversight for the Division of Corporations shall remain in effect as confirmation by the Senate of the Commissioner and Senior Deputy Commissioner of Corporations and Financial Institutions to the renamed Department of Financial Protection and Innovation.

SEC. 4. Section 326 of the Financial Code is amended to read:

326. (a) The Commissioner of Financial Protection and Innovation is responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department and the divisions thereunder. The commissioner has and may exercise all the powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in Section 300. The commissioner may issue rules and regulations consistent with law as the commissioner may deem

necessary or advisable in executing the powers, duties, and responsibilities of the department.

(b) In addition to the authority under subdivision (a), the commissioner may bring a civil action or other appropriate proceeding, pursuant to Section 5552 of Title 12 of the United States Code, to enforce the provisions of the Consumer Financial Protection Act of 2010 (12 U.S.C. Sec. 5481 et seq.), or regulations issued by the federal Consumer Financial Protection Bureau thereunder, with respect to an entity that is licensed, registered, or subject to oversight by the commissioner, and to secure remedies under provisions of the Consumer Financial Protection Act of 2010.

(c) Nothing in this section shall be construed to expand upon or limit the authority granted by Section 5552 of Title 12 of the United States Code (Section 1042 of Subtitle D of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act).

SEC. 5. Section 351 of the Financial Code is amended to read:

351. (a) The chief officer of the Division of Corporations and Financial Institutions is the Senior Deputy Commissioner of Financial Protection and Innovation for the Division of Corporations and Financial Institutions. The Senior Deputy Commissioner of Financial Protection and Innovation for the Division of Corporations and Financial Institutions shall be appointed by the Governor, subject to Senate confirmation, and shall hold office at the pleasure of the Governor. The Senior Deputy Commissioner of Financial Protection and Innovation for the Division of Corporations and Financial Institutions shall receive an annual salary as fixed by the Governor.

(b) The chief officer of the Division of Consumer Financial Protection is the Senior Deputy Commissioner of Financial Protection and Innovation for the Division of Consumer Financial Protection. The Senior Deputy Commissioner of Financial Protection and Innovation for the Division of Consumer Financial Protection shall be appointed by the Governor, subject to Senate confirmation, and shall hold office at the pleasure of the Governor. The Senior Deputy Commissioner of Financial Protection and Innovation for the Division of Consumer Financial Protection shall receive an annual salary as fixed by the Governor.

SEC. 6. Section 371 of the Financial Code is repealed.



SEC. 7. Division 24 (commencing with Section 90000) is added to the Financial Code, to read:

DIVISION 24. CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW

CHAPTER 1. FINDINGS AND PURPOSE

90000. (a) The Legislature finds and declares all of the following:

(1) California consumers are vulnerable to abuse if the state lacks a dedicated financial services regulator with broad authority over providers of financial products and services. The lack of such a regulator has left consumers vulnerable to abuse and forced California businesses to compete with unscrupulous providers. The financial victimization of economically vulnerable consumers, including individuals who lack a safety net, not only harms the individual but also has a broader social and economic cost on all of California, and could lead to increased caseloads for social safety net programs. These problems become even more acute in times of crisis, including the global Covid-19 pandemic and economic fallout. Consequently, where feasible, the Legislature should enact statutory measures to protect California residents from financial abuses in the marketplace for financial products and services.

(2) Robust consumer protections enable wealth building and promote a vibrant economy. They are especially important among various populations, including, but not limited to, military service members, seniors, students, and new Californians. Unfair, deceptive, or abusive practices in the provision of financial products and services undermine the public confidence that is essential to the continued functioning of the financial system and sound extensions of credit to consumers.

(3) Technological innovation offers great promise to the more effective and efficient provision of consumer financial products and services to the population of California and also poses risks to consumers and challenges to law enforcement in addressing those risks.

(4) It is the intent of the Legislature to enact the California Consumer Financial Protection Law to strengthen consumer

protections by expanding the ability of the Department of Financial Protection and Innovation to improve accountability and transparency in the California financial system, provide consumer financial education, and protect consumers from abusive financial practices, while prioritizing the prevention of unethical businesses from harming the most vulnerable populations including military service members, seniors, students, low- and moderate-income individuals, and new Californians.

(b) The purpose of the California Consumer Financial Protection Law shall be to promote consumer welfare, fair competition, and wealth creation in this state by doing all of the following:

(1) Promoting nondiscriminatory access to responsible, affordable credit on terms that reasonably reflect consumers’ ability to repay.

(2) Promoting nondiscriminatory access to consumer financial products and services that are understandable and not unfair, deceptive, or abusive.

(3) Protecting consumers from discrimination and unfair, deceptive, and abusive acts and practices in connection with financial practices and services.

(4) Promoting nondiscriminatory consumer-protective innovation in consumer financial products and services.

CHAPTER 2. SHORT TITLE

90001. This division shall be known, and may be cited, as the “California Consumer Financial Protection Law.”

CHAPTER 3. EXEMPTIONS

90002. (a) This division shall not apply to a licensee, or an employee of a licensee, of any state agency other than the Department of Financial Protection and Innovation to the extent that licensee or employee is acting under the authority of the other state agency’s license.

(b) This division shall not apply to a person or employee of that person to the extent that person or employee is acting under the authority of one of the following licenses, certificates, or charters issued by the Department of Financial Protection and Innovation:

(1) Any person licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code.

(2) Any person licensed as a finance lender, broker, program administrator, or mortgage loan originator under Division 9 (commencing with Section 22000) of the Financial Code.

(3) Any person licensed as a broker-dealer or investment adviser under Division 1 (commencing with Section 25000) of Title 4 the Corporations Code.

(4) Any person licensed as a residential mortgage lender, a mortgage servicer, or a mortgage loan originator under Division 20 (commencing with Section 50000) of the Financial Code.

(5) Any person licensed as a check seller, bill payer, or prorater under Division 3 (commencing with Section 12000) of the Financial Code.

(6) Any person licensed as a capital access company under Division 3 (commencing with Section 28000) of Title 4 of the Corporations Code.

(7) Any person doing business under a license, charter, or certificate issued under the Financial Institutions Law, including Division 1 (commencing with Section 99), Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), and Division 15 (commencing with Section 31000) of the Financial Code.

(c) This division shall not apply to a bank, bank holding company, trust company, savings and loan association, savings and loan holding company, credit union, or an organization subject to oversight of the Farm Credit Administration, when acting under the authority of a license, certificate, or charter under federal law or the laws of another state.

(d) This division applies to all other covered persons, as defined in subdivision (f) of Section 90005.

#### CHAPTER 4. PROHIBITED ACTS

90003. (a) It is unlawful for a covered person or service provider, as defined in subdivision (f) of Section 90005, to do any of the following:

(1) Engage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or practice with respect to consumer financial products or services.

(2) Offer or provide to a consumer any financial product or service not in conformity with any consumer financial law or otherwise commit any act or omission in violation of a consumer financial law.

(3) Fail or refuse, as required by a consumer financial law or any rule or order issued by the department thereunder, to do any of the following:

(A) Permit the department access to or copying of records.

(B) Establish or maintain records.

(C) Make reports or provide information to the department.

(b) For any person who knowingly or recklessly provides substantial assistance to a covered person or service provider in violation of subdivision (a) or any rule or order issued thereunder, the provider of that substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom that assistance is provided.

(c) Notwithstanding subdivision (b), a person shall not be held to have violated paragraph (1) of subdivision (a) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.

90004. (a) In addition to the prohibitions contained in Section 1102.5 of the Labor Code, a covered person or service provider shall not terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that the employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee, or any person acting pursuant to a request of the employee, has either:

(1) Filed or instituted, or caused to be filed or instituted, any proceeding under any consumer financial law.

(2) Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee or other such person reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the department.

(b) For the purposes of this section, the term “covered employee” means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(c) (1) A person who believes that they have been terminated or otherwise discriminated against by any person in violation of subdivision (a) shall have all remedies available under Section 1102.5 of the Labor Code, subject to the restrictions set forth in that section and the implementing regulations.

(2) This subdivision does not restrict the remedies available under this law.

#### CHAPTER 5. DEFINITIONS

90005. The definitions in this section apply throughout this division, except as otherwise provided in this division or if the context clearly indicates otherwise:

(a) “Affiliate” means any person that controls, is controlled by, or is under common control with another person. For purposes of this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person.

(b) “Department” means the Department of Financial Protection and Innovation.

(c) “Consumer” means an individual or an agent, trustee, or representative acting on behalf of an individual or the estate, trust, or joint trust of an individual, however denominated.

(d) “Consumer financial law” means a federal or California law that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction, or any account, product, or service related thereto, with respect to a consumer.

(e) “Consumer financial product or service” means either of the following:

(1) A financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes.

(2) A financial product or service as described in paragraph (1) of subdivision (k).

(f) “Covered person” means, to the extent not preempted by federal law, any of the following:

(1) Any person that engages in offering or providing a consumer financial product or service to a resident of this state.

(2) Any affiliate of a person described in this subdivision if the affiliate acts as a service provider to the person.

(3) Any service provider to the extent that the person engages in the offering or provision of its own consumer financial product or service.

(g) “Credit” means the right granted by a person to another person to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for those purchases.

(h) “Debt” means any obligation of a person to pay another person money regardless of whether the obligation is absolute or contingent, has been reduced to judgment, is fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and includes any obligation that gives rise to right of an equitable remedy for breach of performance if the breach gives rise to a right to payment.

(i) “Deposit-taking activity” means any of the following:

(1) The acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts.

(2) The acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union.

(3) The receipt of funds or the equivalent thereof, as the department may determine by rule or order, received or held by a covered person or an agent for a covered person for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(j) “Commissioner” means the Commissioner of Financial Protection and Innovation.

(k) “Financial product or service” means:

(1) Extending credit and servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of credit, other than solely extending commercial credit to a person who originates consumer credit transactions.

(2) Extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if all of the following:

- (A) The lease is on a nonoperating basis.
- (B) The initial term of the lease is at least 90 days.
- (C) In the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the department.
  - (3) Providing real estate settlement services.
  - (4) Engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer.
  - (5) Selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this paragraph, both:
    - (A) A seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value.
    - (B) Advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions.
  - (6) Providing check cashing, check collection, or check guaranty services.
  - (7) Providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payment system or networks used for processing payment data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person either:
    - (A) Is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payment data about a consumer exclusively for purpose of initiating payment instructions by the consumer to pay that person for the purchase of, or to complete a commercial transaction

for, the nonfinancial good or service sold directly by that person to the consumer.

(B) Provides access to a host server to a person for purposes of enabling that person to establish and maintain a website.

(8) Providing financial advisory services other than services relating to securities provided by a person regulated by the Securities Exchange Commission or a person regulated by a state securities commission, but only to the extent that such person acts in a regulated capacity, to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer) including both of the following:

(A) Providing credit counseling to any consumer.

(B) Providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure.

(9) Collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that:

(A) A person does any of the following:

(i) Collects, analyzes, or maintains information that relates solely to the transactions between a consumer and that person.

(ii) Provides information to an affiliate of the person, as described in subdivision (a).

(iii) Provides information that is used or expected to be used solely in any decision regarding the offering or provision of a product or service that is not a consumer financial product or service.

(B) The information described in clause (i) of subparagraph (A) is not used by the person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in



subparagraph (A) of paragraph (1) of subdivision (e) of Section 90006.

(10) Collecting debt related to any consumer financial product or service.

(11) Directly or indirectly brokering the offer or sale of a franchise in this state on behalf of another.

(12) Offering another financial product or service as may be defined by the department, by regulation, for purposes of this division, if the department finds that the financial product or service is either:

(A) Entered into or conducted as a subterfuge or with a purpose to evade any consumer financial law.

(B) Permissible for a bank or for a financial holding company to offer or to provide under any provision of law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers, excluding, however, solely from the department's authority to define additional financial products and services under this subparagraph and not the exercise of any other authority it may have, the following activities provided to a covered person:

(i) Providing information products or services to a covered person for identity authentication.

(ii) Providing information products or services for fraud or identify theft detection, prevention, or investigation.

(iii) Providing document retrieval or delivery services.

(iv) Providing public records information retrieval.

(v) Providing information products or services for anti-money laundering activities.

(13) The term "financial product or service" does not include either of the following:

(A) Insurance, as defined in Section 22 of the Insurance Code, regulated by the Department of Insurance.

(B) The provision, by a person, of electronic data transmission, routing, intermediate or transient storage, or connections to a telecommunications system or network, not including a person that provides those electronic conduit services if, when providing those services, the person does any of the following:

(i) Selects or modifies the content of the electronic data.

(ii) Transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that the

financial data is differentiated from other types of data of the same form that the person transmits, routes, or stores, or with respect to which, provides connections.

(iii) Is a payee, payor, correspondent, or similar party to a payment transaction with a consumer.

(l) “Payment instrument” means a check, draft, warrant, money order, traveler’s check, electronic instrument, or other instrument, payment of funds, or monetary value, other than currency.

(m) “Person” means an individual, corporation, business trust, estate, trust, partnership, proprietorship, syndicate, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or joint stock company, or any other organization or legal or commercial entity.

(n) (1) “Service provider” means any person that provides a material service to a covered person in connection with the offering or provision by that covered person of a consumer financial product or service, including a person that either:

(A) Participates in designing, operating, or maintaining the consumer financial product or service.

(B) Processes transactions relating to the consumer financial product or service, other than unknowingly or incidentally transmitting or processing financial data in a manner that the data is undifferentiated from other types of data of the same form as the person transmits or processes.

(2) The term “service provider” does not include a person solely by virtue of that person offering or providing to a covered person either:

(A) A support service of a type provided to businesses generally or a similar ministerial service.

(B) Time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(o) (1) “Stored value” means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(2) Notwithstanding paragraph (1), the term “stored value” does not include a special purpose card or certificate, which shall be defined for purposes of this paragraph as funds or monetary value represented in any electronic format, whether or not specially encrypted, that is all of the following:

(A) Issued by a merchant, retailer, or other seller of nonfinancial goods or services.

(B) Redeemable only for transactions with the merchant, retailer, or seller of nonfinancial goods or services or with an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services.

(C) Issued in a specified amount that, except in the case of a card or product used solely for telephone services, may not be increased or reloaded.

(D) Purchased on a prepaid basis in exchange for payment.

(E) Honored upon presentation to the merchant, retailer, or seller of nonfinancial goods or services or an affiliate of such person, which affiliate itself is a merchant, retailer, or seller of nonfinancial goods or services, only for any nonfinancial goods or services

(p) These definitions shall be interpreted consistently with the definitions in the Consumer Financial Protection Act of 2010 (12 U.S.C. Sec. 5481). Any inconsistency or ambiguity shall be resolved in favor of greater protections to the consumer and more expansive coverage.

#### CHAPTER 6. ADMINISTRATION

90006. (a) The department shall regulate the offering and provision of consumer financial products or services under California consumer financial laws and shall exercise nonexclusive oversight and enforcement authority under California consumer financial laws. To the extent permissible under the federal consumer financial laws, the department shall exercise nonexclusive oversight and enforcement under the federal consumer financial laws.

(b) In addition to existing functions, powers, and duties, the department shall have all of the following functions, powers, and duties in carrying out its responsibilities under this law:

(1) To bring administrative and civil actions, and to prosecute those civil actions before state and federal courts.

(2) To hold hearings and issue publications, results of inquiries and research, and reports that may aid in effectuating the purposes of this law.

(3) To perform such other functions as may be authorized or required by law.

(c) Sections 11040 and 11042 of the Government Code do not apply to this law.

(d) (1) The department shall establish the Financial Technology Innovation Office.

(2) The commissioner may investigate, research, analyze, and report on markets for consumer financial products or services.

(3) The commissioner may develop and implement outreach and education programs to underserved consumers and communities.

(4) The commissioner may develop and implement initiatives to promote innovation, competition, and consumer access within financial services.

(e) Merchants, retailers, and other sellers of nonfinancial goods and services are excluded from the department's authority, subject to the following conditions:

(1) The department may not exercise authority under this division as to the following:

(A) The bona fide extension of credit by a merchant, retailer, or seller of nonfinancial goods and services to a consumer for the acquisition of a nonfinancial good or service, provided that all of the following conditions are met:

(i) The credit extended does not significantly exceed the fair market value of the nonfinancial good or service provided.

(ii) The merchant, retailer, or seller does not sell or otherwise assign the debt, except as to the sale of delinquent debt for the purposes of collection.

(iii) The merchant, retailer, or seller of nonfinancial goods and services does not regularly extend credit, as defined under the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.) and regulations issued thereunder.

(B) The collection or sale of delinquent debt arising from credit described in clause (i).

(2) Nothing in paragraph (1) shall limit the department's authority to the extent that the department finds the sale of the

nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title.

90007. With respect to funds under this division:

(a) All moneys collected or received by the commissioner under this division shall be deposited with the State Treasurer to the credit of the Financial Protection Fund, which is hereby created. All moneys in the Financial Protection Fund shall be available, upon appropriation by the Legislature, to the commissioner for purposes of administering this division.

(b) The department may set and collect an annual registration fee for each entity required to register under subdivision (a) of Section 90009, which may be scaled based on the size or market participation of the entity. The annual registration fee shall be limited to the reasonable regulatory costs under this division incident to issuing registrations and performing investigations, inspections, examinations, audits, and supervisory activities; and the administrative enforcement and adjudication of this division with respect to registrants. The regulatory costs for the administrative enforcement of this division are for the purposes of protecting consumers against unfair, deceptive, or abusive acts or practices in connection with any transaction involving the provision of financial products and services in this state; protecting registrants against unfair competition; improving accountability and transparency; and ensuring equitable enforcement of consumer financial laws.

(1) The cost of every inspection and examination of a covered person conducted under the authority of this law shall be paid to the department by the covered person examined and the department may maintain an action for recovery of those costs in any court of competent jurisdiction. In determining the cost of any inspection or examination, the department may use the estimated average hourly cost, including overhead, for all persons performing inspections or examinations of licensees or other persons subject to this division for the fiscal year.

(2) Nothing in this subdivision shall alter or supersede the requirements for the cost of an examination conducted under the authority of any other law administered by the commissioner.

(c) (1) The commissioner shall use funds obtained by the commissioner through the enforcement of any of the laws administered by the commissioner, including moneys received

through fines, penalties, settlements, judgements, or otherwise, for the administration of this division, whether those funds were received before or after the enactment of this division. This provision shall not be applicable to fines, penalties, settlements, or judgments received by any other agency unless the settlement, judgment, or an agreement expressly allocates funds for the administration of this division.

(2) In addition to funds obtained through the enforcement of any of the laws administered by the commissioner, the commissioner may use funds for the administration of this division that are obtained, awarded, delegated, or otherwise attributed to the department through the enforcement of any other consumer, borrower, or investor protection law, regardless of whether the action is brought directly by the commissioner or by another agency or official.

(3) Funds designated as restitution or other ancillary relief to an injured person shall not be subject to this subdivision.

(d) The fees and assessments paid pursuant to this section are nonrefundable.

90008. (a) The department shall, by rule, establish reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person.

(b) The department shall, by rule, require a covered person to provide a timely response, in writing where appropriate, to the department concerning a consumer complaint or inquiry, including all of the following:

(1) Steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer.

(2) Responses received by the covered person from the consumer.

(3) Follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) Subdivisions (a) and (b) shall not apply to a covered person to the extent it is a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(f)).

(d) With respect to the provision of information to consumers by covered persons, all of the following shall apply:

(1) A covered person shall, in a timely manner, comply with a consumer request for information in the control or possession of that covered person concerning the consumer financial product or service that the consumer obtained from that covered person, including supporting written documentation, concerning the account of the consumer.

(2) Notwithstanding paragraph (1), a covered person may not be required by this section to make available to the consumer any of the following information:

(A) Confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors.

(B) Information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting or making any report regarding other unlawful or potentially unlawful conduct.

(C) Information required to be kept confidential by any other provision of law.

(D) Nonpublic or confidential information, including confidential supervisory information.

(E) Information collected, received, maintained, disclosed, sold, or processed pursuant to the Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.), but only to the extent subdivision (b) is inconsistent with any provision of the Fair Credit Reporting Act, and then only to the extent of the inconsistency, or to the extent that subdivision (b) imposes a requirement that is otherwise prohibited under Section 1681t(b) of Title 15 of the United States Code.

(3) This subdivision shall not apply to a consumer credit reporting agency subject to Section 1785.10 of the Civil Code.

(e) The department shall promulgate regulations to implement subdivisions (a) and (b) before commencing an enforcement action against a covered person or service provider for a violation of those provisions.

90009. (a) (1) The department may prescribe rules regarding registration requirements applicable to a covered person engaged in the business of offering or providing a consumer financial product or service, including requiring a filing be made under oath, and requiring the payment of registration fees. The department

may require registration through the Nationwide Multistate Licensing System and Registry.

(2) Notwithstanding paragraph (1), the department shall not require the registration or the payment of a fee by any of the following:

(A) A covered person who is licensed by the department under another law and who is providing a financial product or service within the scope of that license.

(B) A covered person who is licensed or registered by another agency unless the covered person is offering or providing a financial product or service that is not regulated by the agency licensing or registering the covered person.

(C) A covered person who is licensed by the department or a federal agency who engages in deposit-taking activity unless the covered person is offering or providing a financial product or service that is not regulated by the agency licensing the covered person.

(b) The following procedures apply to the oversight of persons required to register under subdivision (a):

(1) The department may prescribe rules to facilitate oversight of covered persons and assessment and detection of risks to consumers.

(2) The department may require a covered person to generate, provide, or retain records for the purposes of facilitating oversight of those persons and assessing and detecting risks to consumers.

(3) The department may prescribe rules regarding a covered person to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(c) The department may prescribe rules applicable to any covered person or service provider identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Such rules shall consider the relative harm to the consumer, the frequency of the act or practice in question, and whether such act or practice is unintentional or stems from a technical, clerical, or



nonmaterial error. Rules under this section may include requirements for the purpose of preventing those acts or practices.

(1) The department shall interpret “unfair” and “deceptive” consistent with Section 17200 of the Business and Professions Code and the case law thereunder.

(2) The department shall have no authority under this law to declare an act or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice either:

(A) Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service.

(B) Takes unreasonable advantage regarding any of the following:

(i) A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.

(ii) The inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.

(iii) The reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(3) The term “abusive” shall be interpreted consistent with Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (12 U.S.C. Sec. 5481). Any inconsistency shall be resolved in favor of greater protections to the consumer and more expansive coverage.

(d) The department may prescribe rules applicable to any covered person to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(e) The department, by regulation, may define unfair, deceptive, and abusive acts and practices in connection with the offering or provision of commercial financing, as defined in subdivision (d) of Section 22800, or other offering or provision of financial products and services to small business recipients, nonprofits, and family farms. The rulemaking may also include data collection

and reporting on the provision of commercial financing or other financial products and services.

(f) (1) In conducting any monitoring, regulatory or assessment activity, the department may gather information from time to time regarding the organization, business conduct, markets, and activities of any covered persons and service providers.

(2) The department may require any covered persons and service providers participating in consumer financial services markets to file with the department, under oath or otherwise, in the form and within a reasonable period of time as the department may prescribe by rule or order, annual or special reports, or answers in writing to specific questions, as necessary for the department to fulfill its monitoring, assessment, and reporting responsibilities.

(3) To clarify the applicability of state credit cost limitations, including rate and fee caps, to the offering and provision of consumer financial products and services by covered persons, the department may interpret and implement, including to prevent evasion thereof, all California credit cost provisions as to their applicability to consumer financial products and services. Nothing in this paragraph shall be construed to give the department authority to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, except as otherwise provided for by statute.

(g) If the department and another agency have joint authority, the department shall consult with that agency before promulgating regulations under such laws. The department shall conduct this consultation a minimum of 30 days before the issuance of a notice of proposed rulemaking and a minimum of 30 days before the issuance of any final rule. The commissioner may not amend or rescind any regulation promulgated by another department or agency.

(h) The department shall promulgate regulations to implement subdivisions (a), (b), and (d) before commencing an enforcement action against a covered person or service provider for a violation of these provisions.

90009.5. (a) Notwithstanding paragraph (1) of subdivision (a) of Section 90009, the department shall promulgate rules regarding registration requirements applicable to a covered person no later than three years following the initiation of its second action to enforce a violation of this division by persons providing the same

or substantially similar consumer financial product or service as the covered person.

(b) The regulation requiring a covered person to register with the department shall become inoperative on January 1, of the calendar year that is four years following the initial year of required registration unless the Legislature takes action to extend the registration or to incorporate the scope of the activity in which the covered person is authorized to engage into a new or existing licensing law. The Legislature shall conduct public hearings to obtain input on the desirability or feasibility of extending, revising, or terminating the regulation. Failure of the Legislature to take action pursuant to this section shall not impact the department's enforcement authority under this division.

(c) The department shall submit to the appropriate committees of the Legislature on or before December 1 before the year a regulation described in subdivision (b) is set to become inoperative, a complete report of the department's activities related to the covered persons required to be registered by the regulation covering the entire period since the initial year of required registration.

(d) At least once annually, prior to March 15, the commissioner shall appear before and present a report to the appropriate committees of the Legislature reviewing all of the activities conducted to implement this division during the prior year and summarizing, with specificity, all of the activities it intends to conduct during the upcoming year. This report shall include, but not be limited to, all of the following:

(1) A summary of all enforcement actions taken to implement this division during the prior year.

(2) A review of business models in use among covered persons that it studied during the prior year and a description of which business models in use among covered persons it plans to study during the upcoming year.

(3) A review of all regulations it proposed, or finalized, or on which it sought public feedback during the prior year and a description of all regulations it intends to propose, finalize, or on which it intends to seek public feedback during the upcoming year.

(4) A review of all of the activities in which it engaged during the prior year using authority contained in paragraph (1) of subdivision (d) of Section 90006 and a description of the activities in which it plans to engage during the upcoming year.

(5) A review of all outreach efforts it conducted during the prior year using authority contained in paragraph (2) of subdivision (d) of Section 90006 and a description of subject matter it plans to include and groups to which it plans to outreach during the upcoming year.

(6) A review of all activities it conducted during the prior year using authority contained in paragraph (3) of subdivision (d) of Section 90006 and a description of what activities it plans to conduct during the upcoming year.

(7) Any other topic deemed relevant by the commissioner or requested to be covered by a chair of the appropriate committee of the Legislature.

#### CHAPTER 7. OVERSIGHT

90010. (a) This section shall apply to any covered person who meets any of the following conditions:

(1) Offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with those loans.

(2) Is a registrant of the department that is required to be registered by statute or by rule.

(3) The department has reasonable cause to determine, by order, after notice to the covered person that the covered person is offering or providing financial products or services.

(4) Is a service provider to a person described in paragraphs (1) to (3), inclusive.

(b) The department may require reports and conduct examinations on a periodic basis of persons described in subdivision (a) for purposes of all of the following:

(1) Assessing compliance with the requirements of consumer financial laws.

(2) Obtaining information about the activities and compliance systems or procedures of that person.

(3) Detecting and assessing risks to consumers, small business, and to markets for consumer financial products and services.

(c) This division shall not be construed to limit the authority of the commissioner to require reports from persons described in subdivision (a), as permitted under subdivision (b), regarding

information owned or under the control of the person, regardless of whether the information is maintained, stored, or processed by another person.

CHAPTER 8. ENFORCEMENT POWERS AND DUTIES

90011. The commissioner and the department shall have all the investigatory and subpoena powers set forth in Sections 11180 to 11191, inclusive, of the Government Code and any subpoena may further require a person to:

(a) Produce documentary material for inspection and copying or reproduction in the form or medium requested by the department.

(b) File written reports or answers to questions.

90012. With respect to the enforcement powers of the commissioner and the department under this division, all of the following apply:

(a) The department may take any action authorized by this law against a covered person or service provider who engages, has engaged, or proposes to engage in unfair, deceptive, or abusive practices with respect to consumer financial products or services.

(b) Relief under this section may include, but is not limited to, any of the following:

(1) Rescission or reformation of contracts.

(2) Refund of moneys or return of real property.

(3) Restitution.

(4) Disgorgement or compensation for unjust enrichment, with any disgorged amounts returned to the affected consumers, to the extent practicable.

(5) Payment of damages or other monetary relief.

(6) Public notification regarding the violation, including the costs of notification.

(7) Limits on the activities or functions of the person.

(8) Monetary penalties, as set forth more fully in paragraph (1) of subdivision (c).

(c) In any civil or administrative action brought pursuant to this division, the following penalties shall apply:

(1) Any person that violates, through any act or omission, any provision of this division shall forfeit and pay a penalty pursuant to this subdivision.

(A) The penalty amounts are as follows:

(i) For any violation of this division, rule or final order, or condition imposed in writing by the department, a penalty may not exceed the greater of either five thousand dollars (\$5,000) for each day during which the violation or failure to pay continues, or two thousand five hundred dollars (\$2,500) for each act or omission in violation.

(ii) Notwithstanding clause (i), for any reckless violation by a person of this division, rule or final order, or condition imposed by the department, a penalty may not exceed the greater of twenty-five thousand dollars (\$25,000) for each day during which the violation continues, or ten thousand dollars (\$10,000) for each act or omission in violation.

(iii) Notwithstanding clause (i) or (ii), for any knowing violation, by a person of this division, rule or final order, or condition imposed by the department, a penalty may not exceed the lesser of 1 percent of the person's total assets, one million dollars (\$1,000,000) for each day during which the violation continues, or twenty-five thousand dollars (\$25,000) for each act or omission in violation.

(B) In determining the amount of any penalty assessed under this division, the department shall take into account mitigating factors and the appropriateness of the penalty with respect to all of the following:

(i) The amount of financial resources of the person charged.

(ii) The good faith of the person charged.

(iii) The gravity of the violation.

(iv) The severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided.

(v) The history of previous violations.

(vi) Other matters as justice may require.

(C) The department may compromise, modify, or remit any penalty that may be assessed or has already been assessed.

90013. The department may bring a civil action in accordance with the following:

(a) If a person violates any provision of this division, rule or final order, or condition imposed in writing by the department, the department may bring an action in the name of the People of the State of California in the superior court to enjoin the acts or

practices or to enforce compliance with this law or any rule or order herein under. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate. A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, those listed in subdivision (b) of Section 90012 and a claim for penalties as stated in subdivision (c) of Section 90012. The court shall have jurisdiction to award additional relief.

(c) In any action brought by the department, the department may recover its costs in connection with prosecuting the action if the department is the prevailing party in the action.

(d) This section shall not be construed to authorize the imposition of exemplary or punitive damages.

90014. The following limitations apply to actions brought under this division:

(a) Except as otherwise permitted by law or equity, including provisions under any consumer financial law, no civil action may be brought under this division more than four years after the date of discovery of the violation to which an action relates.

(b) In any action arising solely under a California or federal consumer financial law, both:

(1) The limitations period under that consumer financial law shall apply, and not the period under subdivision (a).

(2) The department may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

90015. (a) The department may conduct hearings and adjudication proceedings with respect to any person in order to ensure or enforce compliance with both of the following:

(1) The provisions of this division, including any rule, final order, or condition imposed by the department, under this division.

(2) Any other law that the department is authorized to enforce and any regulations or order prescribed thereunder, unless that law specifically limits the department from conducting a hearing or adjudication proceeding and only to the extent of that limitation.

(b) All hearings provided for in this division shall be conducted in accordance with the administrative adjudication provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted therein.

(c) After notice and an opportunity to be heard, the commissioner may, by order, assess penalties under subdivision (c) of Section 90012.

(d) (1) If, in the opinion of the department, any person engages, has engaged, or proposes to engage in any activity prohibited by Section 90003 or 90004, or an activity, act, practice, or course of business that violates a law, rule, order, or any condition imposed in writing on the person by the department, the department may issue an order directing the person to desist and refrain from engaging in the activity, act, practice, or course of business.

(2) If that person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the commissioner.

(e) If any person engages, has engaged, or proposes to engage in any activity prohibited by Section 90003 or 90004, or an activity, act, practice, or course of business that violates a law, rule, order, or any condition imposed in writing on the person by the department, with respect to consumer financial products, the department may include in any administrative action authorized under this section, a claim for ancillary relief as set forth in subdivision (b) of Section 90012. The court shall have jurisdiction to award additional relief.



(f) If, in the opinion of the department, any covered person or service provider is engaging, has engaged, or proposes to engage in an activity, act, practice, or course of business that violates a law, rule, order, or any condition imposed in writing on the person by the department, the department may, after notice and an opportunity for a hearing, suspend or revoke the license or registration of the covered person or service provider.

(g) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for an order compelling the cited licensee or person to comply with the orders 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 30 calendar days from the date the application is filed.

(3) The commissioner shall serve a copy of the application and final 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 and order at the hearing. The respondent bears 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 by the superior court. Any method of service authorized by laws under which the final order was issued, including those methods under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is considered valid service for the purposes of determining whether the order of the commissioner is final.

(5) The respondent shall not be allowed to raise any defenses or present any evidence at the hearing on the application that had been or could have been raised by the respondent at an administrative hearing to challenge the commissioner's order, or in an appeal or writ from such proceedings.

(6) The judgment issued pursuant to paragraph (4) of this subdivision 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.

90016. The commissioner shall not outsource or delegate enforcement authority under this division to a private attorney.

90017. In regard to cooperation with the Attorney General, the following provisions apply:

(a) The department may enter into an agreement with the Attorney General with respect to civil actions by each agency.

(b) A provision of this division, any regulation or order made under the authority of this division, or any agreement under this subdivision shall not do any of the following:

(1) Limit the powers or authorities of the Attorney General, including, but not limited to, the Attorney General's ability to prosecute violations of civil or criminal laws.

(2) Limit the rights of any consumer, or the obligations of any covered person or service provider, under the Unfair Competition Law, the False Advertising Law, or any consumer financial law.

(c) (1) If the department obtains evidence that a person has engaged in conduct that may constitute a violation of criminal law, the department shall transmit that evidence to the Attorney General.

(2) This subdivision shall not affect any other authority of the department to disclose information.

(d) (1) This section shall not be construed to limit the authority of the department under this division to cooperate with any regulatory or law enforcement body.

(2) The department shall notify other regulatory agencies that will be impacted by the department's actions under this division.

(e) Nothing in this division shall limit the ability of any district attorney or any city attorney lawfully permitted pursuant to Section 17204 of the Business and Professions Code to bring actions or obtain relief pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. Remedies sought and obtained by district attorneys and city

attorneys pursuant to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code shall be cumulative to remedies set forth in this division.

CHAPTER 9. ANNUAL REPORT

90018. (a) The commissioner shall prepare and publish on the department's internet website an annual report detailing actions taken during the prior year under this law.

(b) The report described in subdivision (a) shall include, but not be limited to, information on actions taken with respect to all of the following:

(1) Rulemaking, enforcement, oversight, consumer complaints and resolutions, education, and research.

(2) The activities of the Financial Technology Innovation Office.

(c) The report may include recommendations, including those intended to result in improved oversight, greater transparency, or increased availability of beneficial financial products and services in the marketplace.

CHAPTER 10. MISCELLANEOUS

90019. (a) The provisions of this division shall be liberally construed to effectuate its purposes.

(b) The provisions of this act are severable. If any provision of this division, or amendments to it, or regulations promulgated under it, or under such amendments, is held invalid, illegal, or unenforceable, then that invalidity, illegality, or unenforceability shall not affect other provisions, amendments, or regulations that can be given effect without the invalid, illegal, or unenforceable provision, amendment, or regulation. Any invalidity, illegality, or unenforceability shall be construed as narrowly as possible and shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved.

(c) To the extent that any provision of this division is preempted by federal law, the provision shall not apply and shall not be enforced solely as to the extent of the preemption and not as to other circumstances, persons, or applications.

SEC. 8. Section 11041 of the Government Code is amended to read:

11041. (a) Section 11042 does not apply to the Regents of the University of California, the Trustees of the California State University, Legal Division of the Department of Transportation, Division of Labor Standards Enforcement of the Department of Industrial Relations, Workers' Compensation Appeals Board, Public Utilities Commission, State Compensation Insurance Fund, Legislative Counsel Bureau, Inheritance Tax Department, Secretary of State, State Lands Commission, Alcoholic Beverage Control Appeals Board (except when the board affirms the decision of the Department of Alcoholic Beverage Control), State Department of Education, Department of Financial Protection and Innovation, and Treasurer with respect to bonds, nor to any other state agency which, by law enacted after Chapter 213 of the Statutes of 1933, is authorized to employ legal counsel.

(b) The Trustees of the California State University shall pay the cost of employing legal counsel from their existing resources.

SEC. 9. The enforcement authority provided by this act shall be applicable only to acts or practices engaged in on or after the operative date of this act.

SEC. 10. The Legislature finds and declares that Section 7 of this act, which adds Division 24 (commencing with Section 90000) to the Financial Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Financial records that include personal financial information and identity information must be protected against misuse. Therefore, it is in the health and safety of the people of California to preserve the confidentiality of this information.

SEC. 11. 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.





Approved \_\_\_\_\_, 2020

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*Governor*