

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2001 (Grayson)
Version: June 9, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

California Financing Law: remote work

DIGEST

This bill authorizes a finance lender licensed under the California Financing Law (CFL) to designate an employee to work remotely on the lender's behalf as long as the finance lender complies with specified privacy, record-keeping, and consumer safety requirements.

EXECUTIVE SUMMARY

California, like many other states, took action at the start of the COVID-19 pandemic to provide worksite flexibility to some of its financial services licensees. In March 2020, the Business, Consumer Services, and Housing Agency (BCSH) and Department of Financial Protection and Innovation (DFPI, then the Department of Business Oversight) issued emergency guidance that allowed certain banking and financial licensees, including finance lenders and servicers, escrow agents, student loan servicers, and residential mortgage lenders and servicers additional flexibility around remote work. The guidance stated that DFPI would not take enforcement action against licensees operating unlicensed branches to the extent that, during the state of emergency, employees conduct activities provided that appropriate measures are taken to protect consumers and their state.

The guidance is set to expire when the COVID-19 state of emergency ends. In anticipation of that event, this bill allows finance lenders licensed under the CFL to permit employees to work remotely in non-public locations, provided that certain data security and records preservation measures are met.

This bill is sponsored by the California Financial Services Association and supported by One Main Financial. There is no known opposition. This bill passed out of the Senate Banking and Financial Institutions Committee with a 7-0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Financing Law (CFL), which regulates finance lenders and brokers making and brokering consumer and commercial loans, as specified, and authorizes the Commissioner of the DFPI (Commissioner) to license and regulate covered entities. (Fin. Code, div. 9, §§ 22000 et seq.)
- 2) Prohibits a licensee under 1) from conducting the business of making loans or administering a Property Assessed Clean Energy (PACE) program within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the Commissioner upon the Commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division.
 - a) An authorization, once granted, remains in effect until revoked by the commissioner. The commissioner may authorize the other business through the Nationwide Mortgage Licensing System and Registry. (Fin. Code, § 22154(a).)
- 3) Prohibits a finance lender, broker, mortgage loan originator, or program administrator licensee under 1) from transacting licensed business or administering any PACE program under a name or place of business not named in the license except pursuant to an order of the Commissioner. (Fin. Code, § 22155.)
- 4) Requires finance lender, broker, program administrator, and mortgage loan originator licensees under 1) to keep and use in their business, books, accounts, and records which will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations made by the Commissioner, including specified information relating to particular types of loans secured on real property.

This bill:

- 1) Authorizes a licensee under the CFL to designate an employee, when acting within the scope of employment, to perform work on the licensee's benefit at a remote location if the licensee does all of the following:
 - a) Prohibits in-person consumer interactions, including the physical receipt of cash or other monetary value of the disbursement of loan proceeds, at a remote location and does not designate a remote location to the public as a business location.

- b) Prohibits specified business records and account documents from being physically mailed to, shipped to, or stored at a remote location except for storage on an encrypted device or encrypted media.
 - c) Prohibits the physical receipt of mail related to the licensee's licensed business at a remote location.
 - d) Prohibits a consumer's personal information from being physically stored at a remote location except for storage on an encrypted device or encrypted media.
 - e) Provides an employee working at a remote location with appropriate equipment to perform work and safeguard licensee records and consumer personal information, which may include encrypted devices, virtual private networks (VPNs), and similar technology.
 - f) Adopts and adheres to written policies and procedures deemed appropriate by the DFPI for the supervision and maintenance of appropriate control over the work of employees at remote locations and the safeguarding of the licensee's records and consumer personal information in connection with work at a remote location, which must include, but are not limited to: employee data security training, maintenance of security logs of remote logins, procedures designed to detect suspicious logins or attempted logins and suspend access to potentially compromised accounts or equipment, and data breach response procedures.
 - g) Records telephone calls with consumers conducted from a remote location to the same extent as telephone calls with consumers conducted from licensed locations, if the licensee records such calls in the normal course of business.
 - h) All books, records, and persons that the Commissioner of the DFPI is entitled to examine, inspect, or interview shall be made available to the commissioner at a licensed location.
- 2) Defines the following terms:
- a) "Encrypted" has the same meaning as in Civil Code section 1798.82, "rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security."
 - b) "Remote location" means a personal residence or a temporary, nonpublic location not owned or leased by a licensee or an affiliate of the licensee that is not simultaneously accessible by anyone other than a single employee and individuals who maintain a common household with the employee.

COMMENTS

1. Author's comment

According to the author:

On March 21 2020, the Business, Consumer Services, and Housing Agency issued emergency guidance allowing finance lender employees to work remotely. Since that guidance went into effect, there have been no reported issues from consumers or licensees. Despite this positive experience, the emergency guidance will expire when the COVID-19 state of emergency ends. At a time when many employers, including the State of California, recognize that allowing remote work is vital to attracting and retaining talent, removing this ability for finance lenders will place an unnecessary burden on licensees and their employees.

2. The rise of working from home (for some)

The COVID-19 pandemic accelerated an existing trend toward remote work in certain sectors. Nearly two years into the pandemic, 59 percent of Americans in jobs capable of being done through remote work were still working remotely, an increase of 36 percent prior to the pandemic.¹ In the words of Apple CEO Tim Cook, remote work is “the mother of all experiments.”² And while some employees are excited to return to the office, many prefer remote work, reporting that it helps with COVID safety, work-life balance, and for some, being away from an office culture that is an “old boys’ club” that is more stressful than inclusive.³

Of course, the option to work from home is not available to all employees, or on an equal basis. The COVID-19 shift to working from home disproportionately benefitted employees who were better educated or have higher incomes: those with a bachelor’s degree or higher were more than three times as likely as those with only a high school education to have an adult in their household who substituted in-person work for telework.⁴ Black and Hispanic individuals were, on the other hand, overrepresented in the category of “essential workers” who were required to go to work in-person

¹ Sahadi, *Employers take note: Most remote workers don't want to go back to the office*, CNN (Feb. 16, 2022), <https://www.cnn.com/2022/02/16/success/pew-survey-covid-affect-on-work-from-home/index.html> (last visited Jun. 10, 2022).

² Reuter, *Apple CEO says remote work is the 'mother of all experiments' – and the eventual solution may not look anything like what we have now*, Insider (Jun. 7, 2022) <https://www.businessinsider.com/apple-ceo-tim-cook-remote-work-mother-of-all-experiments-2022-6> (last visited Jun. 10, 2022).

³ Goldberg, *A Two-Year, 50-Million-Person Experiment in Changing How We Work*, N.Y. Times (Mar. 10, 2022; updated Apr. 13, 2022), available at <https://www.nytimes.com/2022/03/10/business/remote-work-office-life.html> (last visited Jun. 10, 2022).

⁴ Marshall, Burd, & Burrows, *Those Who Switched to Telework have Higher Income, Education, and Better Health*, US Census Bureau (March 31, 2021), <https://www.census.gov/library/stories/2021/03/working-from-home-during-the-pandemic.html>.

throughout the COVID-19 pandemic, which contributed to the disproportionate COVID-19 death toll in these populations.⁵

3. This bill authorizes CFL licensees to permit certain employees to work remotely, subject to specified security measures

This bill seeks to make remote work easier for employees in the banking and financial services industry, specifically for businesses licensed under the CFL. Because of the sensitive nature of the information collected and retained by these businesses – personal identifying information, bank account information, credit records, and so forth – state law and regulations place strict data security measures on CFL licensees, including restrictions that prevent licensees’ employees from working from home.⁶

In March of 2020, however, DFPI and the Business, Consumer Services, and Housing Agency issued emergency guidance that eased these restrictions to permit remote work in light of the COVID-19 pandemic.⁷ The guidance stated that DFPI (then the Department of Business Oversight) would not take enforcement action against licensees operating unlicensed branches to the extent that, during the state of emergency, employees conduct activities provided that appropriate measures are taken to protect consumers and their data.⁸ The guidance also stated that DFPI would not criticize specified licensee lenders whose employees work from home, provided that the employees did not keep physical records at the remote location, did not meet with customers at home, and the licensee took measures to protect consumer data privacy.⁹ The guidance is set to expire at the end of the COVID-19 state of emergency.¹⁰

AB 2001 permits finance lenders under the CFL to allow certain employees to work from a remote location regardless of whether a state of emergency is in place. The bill imposes several data security and preservation requirements on a licensee allowing remote work, such as prohibiting in-person interactions at the remote location, prohibiting the retention or receipt of physical records at the remote location, and requiring the licensee to provide the employee with appropriate equipment and technology to safeguard consumer information. The bill incorporates many of the

⁵ Williams, et al., *Reopening the United States: Black and Hispanic Workers Are Essential and Expendable Again*, American Journal of Public Health (Oct. 2020) Vol. 110, No. 10, at p. 1506, available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2020.305879> (last visited Jun. 10, 2022).

⁶ See, e.g., Fin. Code, §§ 22154, 22155.

⁷ California Business, Consumer Services and Housing Agency, *Guidance for Lenders During the COVID-19 Pandemic* (Mar. 22, 2020), available at https://www.bcsb.ca.gov/coronavirus19/dbo_lender.pdf (last visited Jun. 10, 2022).

⁸ *Id.* at p. 2.

⁹ *Ibid.*

¹⁰ *Ibid.*

protections in the DFPI's emergency guidance and incorporates aspects of model legislation developed by the American Financial Services Association (ASFA).¹¹

4. Arguments in support

According to the sponsor of the bill, California Financial Services Association:

In response to the COVID-19 pandemic and the Governor's proclamation of a state of emergency, DFPI, then called the Department of Business Oversight, released guidance on March 21, 2020, allowing for limited remote work options for California Financing Law (CFL) licensee employees. Despite an overall positive guidance for finance lenders, their employees, and consumers, the emergency guidance will expire when the COVID-19 state of emergency ends and employees will no longer be permitted to work from home.

AB 2001 would also put in place significant safeguards to ensure that consumers and their data and privacy would remain protected. A finance lender employee may only telework if they do not meet with a consumer in person at home, do not store records or a consumer's personal information at home except for on an encrypted device or encrypted media, and use the appropriate equipment to safeguard records and personal information. These protections help balance the flexibility that employers need to be competitive with the need to protect a customer's privacy and security.

SUPPORT

California Financial Services Association (sponsor)
One Main Financial

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 1379 (Ochoa Bogh, 2022) authorizes a pharmacist working for a hospital to conduct certain tasks remotely, as specified. SB 1379 is pending before the Senate Business, Professions, and Economic Development Committee.

¹¹ See ASFA Model Work From Home Legislation, available at <https://afsaonline.org/work-from-home-resources/> (last visited Jun. 10, 2022).

Prior Legislation:

AB 1460 (Bigelow, 2021) would have authorized the Department of Human Resources to provide a one-time payment of an unspecified amount to employees required to telework as a result of the COVID-19 pandemic to offset the costs associated with working remotely. AB 1460 died in the Assembly Public Employment and Retirement Committee.

AB 1028 (Seyarto, 2021) would have established the Telework Flexibility Act, which would have allowed specified employees to work a flexible work schedule for employees working remotely. AB 1028 died in the Assembly Labor and Employment Committee.

AB 513 (Bigelow, 2021) would have authorized an employee working from home or other remote location to receive legally required notices and postings electronically and sign or acknowledge certain documents electronically. AB 513 died in the Assembly Labor and Employment Committee.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 7, Noes 0)

Assembly Floor (Ayes 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)

Assembly Banking and Finance Committee (Ayes 9, Noes 0)
