Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Jesse Gabriel, Chair
AB 2001 (Grayson) – As Introduced February 14, 2022

SUBJECT: California Financing Law: remote work

SUMMARY: This bill would authorize 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. Specifically, **this bill would**:

1) Authorize a licensed finance lender to designate an employee, when acting within the scope of employment, to perform work on the licensed finance lender's behalf at a remote location if the licensed finance lender does the following:

   - Prohibits in-person consumer interactions at a remote location and does not designate a remote location to the public as a business location.

   - Prohibits records that current law requires be kept in order for the commissioner to determine if the licensee is in compliance with state law from being physically stored at a remote location except for storage on an encrypted device or encrypted media.

   - Prohibits a consumer's personal information from being physically stored at a remote location except for storage on an encrypted device or encrypted media.

   - Provides an employee working at a remote location with the appropriate equipment, which may include encrypted devices, virtual private networks, and similar technology, to perform the work and safeguard licensee records and consumer personal information.

   - Adopts and adheres to appropriate, as determined by the Department of Financial Protection and Innovation (DFPI), written policies and procedures to supervise work of employees at remote locations.

2) Define "remote location" to mean a personal residence or a temporary, nonpublic location that is not simultaneously accessible by anyone other than an employee and the employee's immediate family.

EXISTING LAW:

1) Prohibits a CFL license from conducting the business of making loan 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 evasion of the CFL. (Fin. Code Sec. 22154.)

2) Prohibits a finance lender, broker, mortgage loan originator, or PACE program administrator licensee from transacting the business licensee or make any loan or administer any PACE

program provided for by the CFL: under any other name or at any other place of business than that named in the license. (Fin. Code Sec. 22155.)

3) Requires a finance lender, broker, program administrator, and mortgage loan originator licensees 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. (Fin. Code Sec. 22156.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Purpose of this bill**: This bill seeks to permit finance lender employees to continue working remotely, subject to specific parameters, after the COVID-19 state of emergency ends. This bill is sponsored by the California Financial Services Association.

2) **Author's statement**: According to the author:

   > On March 20, 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.

3) **Background**: While the share of workers who telework has gradually been increasing over the last few decades, mandatory stay-at-home orders from state and local officials during the COVID-19 pandemic pushed many professionals into permanent or part-time teleworking. There is also indication that at least part of the workforce that transitioned into remote work during the COVID-19 pandemic will remain remote in the future. Remote work is often attractive to workers because it allows for more flexibility, less driving or commuting, and the ability to live in more affordable communities. As a result, remote work is expected to become more common in the coming years.[1]

   Notably, remote work is not practical for all types of occupations, and its availability depends on the nature of the industry and employees' tasks and obligations. Professional industries that rely more on services that can be provided digitally tend to transition toward remote work more easily, and this has brought to light new challenges for the population that has benefited from this shift.[2]

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[1] Adam Ozimek, *Future Workforce Report 2021: How Remote Work is Changing Businesses Forever*, Upwork (September 28,2021), available t https://www.upwork.com/research/future-workforce-report.

[2] Susan Lund et al., "What's next for remote work: An analysis of 2,000 tasks, 800 jobs, and nine countries," McKinsey Global Institute (November 23, 2020), available at https://www.mckinsey.com/featured-insights/future-of-work/whats-next-for-remote-work-an-analysis-of-2000-tasks-800-jobs-and-nine-countries#.

California, like many other states, transitioned during the pandemic to provide worksite flexibility to some of its financial services licensees. In March 2020, the Business, Consumer Services, and Housing Agency and DFPI issued emergency guidance that granted certain 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 emergency guidance also stated that DFPI would not criticize student loan servicers or licensees sponsoring mortgage loan originators who permit their employees to work from home, provided that:

- the employee does not keep any physical business records at home or anywhere other than the licensed location;
- the employee does not meet with any customers at home;
- the licensee has a procedure in place to supervise employees as required by law;
- the employee uses only computers and devices that are encrypted and accesses the licensee's network using a virtual private network that is encrypted; and
- the licensee and employee take all other necessary measures to protect consumer data privacy.

Seeking to ensure that finance lender employees may continue working from home upon the expiration of the emergency orders authorizing remote work, this bill would largely codify the requirements listed immediately above. Arguing in support of this measure, OneMain Financial writes:

> Since DFPI's emergency guidance on remote work went into effect, no major issues have been reported and the experience has been positive. According to the American Financial Services Association (AFSA), the pandemic has necessitated technology enabled remote working. Although many companies have invested in virtual private networks (VPNs) and other advanced technology before 2020, the pandemic has fostered a cultural shift forward years or arguably even decades. For business models that support it, and with the right technology and training in place, consumers have a very similar experience with a financial institution employee working from home as in a commercial office. It's been proven that nearly all operational functions for many financial service business models can take place through remote working. The pandemic has shown us that working from home, works.
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> Despite the positive experience, DFPI's 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 has become vital to attracting and retaining talent, removing this ability for finance lenders will place an unnecessary burden on licensees and their employees. Continuing to allow for remote working allows financial services providers more flexibility in employment practices, while still providing the same secure services to the public.

4) **Security of records and adequate support**: This bill has a number of provisions to ensure the security of consumer records in the hands of finance lender employees that are working remotely. First, the bill prohibits in-person consumer interactions at a remote location and prohibits a remote location from being designated as a business location. The bill would also prohibit physical storage of consumer records at the remote location of the employee and require that any records stored on devices be encrypted. These requirements appear to protect both the consumer, and the employee and their family, from the potential theft of physical or digitally stored records.

   Importantly, this bill also requires that the employer provide the employee with appropriate equipment, which may include encrypted devices, virtual private networks, and similar technology, to perform work and safeguard licensee records and consumer personal information.

   History shows that encryption is useful at preventing potential data breaches and ransomware attacks. Encryption, simply put, renders data unreadable for anyone except the intended recipient. While encryption can be expensive for entities to employ, it is one of the most useful tools at preventing cyberattacks. Indeed, California has a record of requiring encryption of certain information and also providing that encryption (so long as the encryption key is not also breached) limits liability in the event of data breaches. (*See* Chau, Ch. 337, Stats. 2016; Chau, Ch. 522, Stats. 2015.)

   Given the sensitive information that financial records contain, it is imperative that a baseline level of encryption be established, along with good cyber hygiene habits for any finance lender employees working remotely. As introduced, this bill refers to "encryption" generally, but varying standards of encryption exist, relative to the nature of the information being protected and the resources that are allocated to the protection of that information. As the work-from-home sector grows and the network of employees with access to others personal information becomes more decentralized, there is an argument that the vulnerabilities in systems grow, making the need for information security standards all the more important.

   The following amendment would define "encrypted" to mean "rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology of methodology generally accepted in the field of information security." This is the definition used in California's data breach notification law and using this standard in AB 2001 would establish an important baseline for encryption and may also serve to limit the liability of finance lenders proactively as California law distinguishes between breaches of encrypted and unencrypted personal information.

   Author's amendment:

   - On page 3, line 38 after "(a)", insert "***for the purposes of this section, "encrypted" has the same meaning as Civ. Code Sec. 1798.82(h).***
   - Renumber subsequent subdivisions accordingly.

5) **Double referral**: This bill was double-referred to the Assembly Committee on Banking and Finance where it was heard on March 28, 2022 and passed out 9-0.

REGISTERED SUPPORT / OPPOSITION:

Support

California Financial Services Association
One Main Financial

Opposition

None on file

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