

AMENDED IN SENATE MARCH 26, 2007

**SENATE BILL**

**No. 385**

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**Introduced by Senator Machado**

February 21, 2007

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An act to add Section ~~10248.7~~ 10240.3 to the Business and Professions Code, to add Sections 215.5, 22169, and 50333 to the Financial Code, and to add Section 13984 to the Government Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Machado. Nontraditional mortgage products.

The Business, Transportation and Housing Agency consists of various agencies, including, but not limited to, the Department of Corporations, the Department of Real Estate, and the Department of Financial Institutions. The agency is under the supervision of the Secretary of Business, Transportation and Housing.

Under existing law, state financial institutions are regulated by the Department of Financial Institutions. Other entities that engage in the business of making or brokering residential mortgage loans, *including, but not limited to, real estate brokers and residential mortgage lenders*, are regulated by the Department of Corporations under the California Finance Lenders Law or the California Residential Mortgage Lending Act or by the Department of Real Estate under the Real Estate Law. *Existing law provides that willful violations of the provisions governing real estate brokers and residential mortgage lenders are crimes.* Federal financial institution regulatory agencies and the Conference of State Bank Supervisors, together with the American Association of Residential Mortgage Regulators, have each published guidance on nontraditional mortgage product risks.

This bill would require the Commissioner of Financial Institutions to ~~issue regulations applying~~ *apply* that guidance to all ~~state-regulated~~ *state-regulated* financial institutions, *including, but not limited to, privately insured, state-chartered credit unions,* and would *authorize the commissioner* to issue emergency and final regulations ~~in that regard~~ *for clarification purposes, as specified.* The bill would also require the Commissioner of Real Estate and the Commissioner of Corporations to ~~adopt regulations or rules applying~~ *apply* the guidance to real estate brokers and licensees, respectively, and would ~~require~~ *authorize* those commissioners to adopt emergency and final regulations or rules ~~in that regard~~ *for clarification purposes, as specified.* The bill would require the Secretary of Business, Transportation and Housing to ensure *that* these commissioners ~~adopt those regulations or rules in a consistent manner~~ *coordinate their policymaking and rulemaking efforts.*

*This bill would also require specified financial institutions, specified real estate brokers, finance lenders, and residential mortgage lenders to adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the guidance. Because a willful violation of these provisions with respect to real estate brokers and residential mortgage lenders would be a crime, the bill would impose a state-mandated local program.*

*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.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. (a) The Legislature finds and declares that
- 2 ~~uniform application~~ of the Interagency Guidance on Nontraditional
- 3 Mortgage Product Risks *issued in September 2006 by the Office*
- 4 *of the Comptroller of the Currency, the Board of Governors of the*
- 5 *Federal Reserve System, the Federal Deposit Insurance*
- 6 *Corporation, the Office of Thrift Supervision, and the National*
- 7 *Credit Union Administration, and the guidance on nontraditional*
- 8 *mortgage product risks issued in November 2006 by the Conference*

1 of State Bank Supervisors and the American Association of  
2 Residential Mortgage Regulators to both federal and state licensees  
3 is critical to protect borrowers and lenders. Regulators contain  
4 important risk management and consumer protection principles.

5 (b) The Legislature finds and declares that consistent application  
6 of the guidance described in subdivision (a) to state-regulated  
7 persons and institutions engaged in the brokering, originating,  
8 servicing, underwriting, and issuance of nontraditional mortgage  
9 products is critical to protect borrowers and lenders.

10 ~~(b)~~

11 (c) It is the intent of the Legislature that the Department of Real  
12 Estate, the Department of Financial Institutions, and the  
13 Department of Corporations take steps to ensure that *state-licensed*  
14 *mortgage* lenders and brokers are aware of the existence and  
15 content of the guidance *described in subdivision (a)* as soon as  
16 possible and that lenders and brokers are encouraged to comply  
17 with the guidance before formal regulations are adopted requiring  
18 them to do so. *that guidance at the earliest possible date.*

19 SEC. 2. Section ~~10248.7~~ 10240.3 is added to the Business and  
20 Professions Code, to read:

21 ~~10248.7.~~

22 10240.3. (a) The commissioner shall ~~adopt regulations~~  
23 ~~applying~~ *apply* the guidance on nontraditional mortgage product  
24 risks published on November 14, 2006, by the Conference of State  
25 Bank Supervisors and the American Association of Residential  
26 Mortgage Regulators to real estate brokers. ~~The regulations shall~~  
27 ~~include subsequent amendments to that guidance. Regulators,~~  
28 *together with any subsequent amendment to, clarification of, or*  
29 *interpretation of that guidance, to real estate brokers acting within*  
30 *the meaning of subdivision (d) of Section 10131.*

31 (b) The commissioner ~~shall adopt emergency regulations to~~  
32 ~~implement~~ *may adopt emergency and final regulations to clarify*  
33 *the application of this section as soon as possible.*

34 (c) *A real estate broker acting within the meaning of subdivision*  
35 *(d) of Section 10131 shall adopt and adhere to policies and*  
36 *procedures that are reasonably intended to achieve the objectives*  
37 *set forth in the guidance described in subdivision (a).*

38 SEC. 3. Section 215.5 is added to the Financial Code, to read:

39 215.5. (a) The commissioner shall ~~issue regulations applying~~  
40 *apply* the Interagency Guidance on Nontraditional Mortgage

1 ~~Product Risks published on October 4, 2006, by Office of the~~  
2 ~~Comptroller of the Currency, Treasury, Board of Governors of the~~  
3 ~~Federal Reserve System, Federal Deposit Insurance Corporation,~~  
4 ~~Office of Thrift Supervision, Treasury, and the National Credit~~  
5 ~~Union Administration to state regulated financial institutions. The~~  
6 ~~regulations shall include subsequent amendments to that guidance.~~  
7 *Risks issued in September 2006 by the Office of the Comptroller*  
8 *of the Currency, the Board of Governors of the Federal Reserve*  
9 *System, the Federal Deposit Insurance Corporation, the Office of*  
10 *Thrift Supervision, and the National Credit Union Administration,*  
11 *together with any subsequent amendment to, clarification of, or*  
12 *interpretation of, that guidance, to state-regulated financial*  
13 *institutions, including, but not limited to, privately insured,*  
14 *state-chartered credit unions.*

15 (b) ~~The commissioner shall issue emergency regulations to~~  
16 ~~implement~~ *may issue emergency and final regulations to clarify*  
17 *the application of this section as soon as possible.*

18 (c) *A bank or credit union to which the commissioner applies*  
19 *the guidance described in subdivision (a) shall adopt and adhere*  
20 *to policies and procedures that are reasonably intended to achieve*  
21 *the objectives set forth in that guidance.*

22 SEC. 4. Section 22169 is added to the Financial Code, to read:

23 22169. (a) ~~The commissioner shall make regulations applying~~  
24 *apply* the guidance on nontraditional mortgage product risks  
25 published on November 14, 2006, by the Conference of State Bank  
26 Supervisors and the American Association of Residential Mortgage  
27 Regulators to licensees. ~~The regulations shall include subsequent~~  
28 ~~amendments to that guidance.~~ *Regulators, together with any*  
29 *subsequent amendment to, clarification of, or interpretation of*  
30 *that guidance, to licensees.*

31 (b) ~~The commissioner shall make emergency regulations to~~  
32 ~~implement~~ *may adopt emergency and final regulations to clarify*  
33 *the application of this section as soon as possible.*

34 (c) *A licensee shall adopt and adhere to policies and procedures*  
35 *that are reasonably intended to achieve the objectives set forth in*  
36 *the guidance described in subdivision (a).*

37 SEC. 5. Section 50333 is added to the Financial Code, to read:

38 50333. (a) ~~The commissioner shall promulgate rules applying~~  
39 *apply* the guidance on nontraditional mortgage product risks  
40 published on November 14, 2006, by the Conference of State Bank

1 Supervisors and the American Association of Residential Mortgage  
 2 Regulators to licensees. ~~The regulations shall include subsequent~~  
 3 ~~amendments to that guidance. Regulators, together with any~~  
 4 ~~subsequent amendment to, clarification of, or interpretation of~~  
 5 ~~that guidance, to licensees.~~

6 (b) ~~The commissioner shall promulgate emergency rules to~~  
 7 ~~implement~~ *may adopt emergency and final rules to clarify the*  
 8 *application of this section as soon as possible.*

9 (c) *A licensee shall adopt and adhere to policies and procedures*  
 10 *that are reasonably intended to achieve the objectives set forth in*  
 11 *the guidance described in subdivision (a).*

12 SEC. 6. Section 13984 is added to the Government Code, to  
 13 read:

14 13984. In order to ensure that ~~the guidances specified in Section~~  
 15 ~~10248.7 10240.3~~ of the Business and Professions Code and  
 16 Sections 215.5, 22169, and 50333 of the Financial Code are applied  
 17 ~~uniformly~~ *consistently* to all California entities engaged in the  
 18 brokering, *originating*, servicing, underwriting, and issuance of  
 19 nontraditional mortgage products, the secretary shall ensure that  
 20 the Commissioner of Real Estate, the Commissioner of Financial  
 21 Institutions, and the Commissioner of Corporations ~~adopt and~~  
 22 ~~implement in a consistent manner regulations or rules applying~~  
 23 ~~the guidances; coordinate their policymaking and rulemaking~~  
 24 ~~efforts.~~

25 SEC. 7. *No reimbursement is required by this act pursuant to*  
 26 *Section 6 of Article XIII B of the California Constitution because*  
 27 *the only costs that may be incurred by a local agency or school*  
 28 *district will be incurred because this act creates a new crime or*  
 29 *infraction, eliminates a crime or infraction, or changes the penalty*  
 30 *for a crime or infraction, within the meaning of Section 17556 of*  
 31 *the Government Code, or changes the definition of a crime within*  
 32 *the meaning of Section 6 of Article XIII B of the California*  
 33 *Constitution.*