

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2288**

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**Introduced by Assembly Member Blakeslee**

February 18, 2010

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~~An act to amend Section 101.1 of the Business and Professions Code, relating to professions and vocations. An act to amend Section 10239.4 of the Business and Professions Code, and to add Section 25119 to the Corporations Code, relating to securities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2288, as amended, Blakeslee. ~~Professions and vocations: boards: review.~~ *Issuers of securities: real estate brokers: hard money lending.*

*(1) Existing law, the Real Estate Law, provides for the licensing and regulation of real estate brokers by the Real Estate Commissioner. Existing law requires a broker to provide specified notices and disclosures for transactions that involve the sale of, or offer to sell, a series of notes secured directly by interests in real property or the sale of undivided interests in a note secured directly by one or more parcels of real property equivalent to a series transaction. Existing law requires a real estate broker who arranges these transactions to clearly indicate in the broker's transaction file the provisions of the Corporate Securities Law of 1968 pertaining to qualification or exemption from qualification under which the transaction is being conducted. Existing law makes a willful violation of the Real Estate Law a crime.*

*This bill would require a broker arranging those transactions to provide a copy of the information in the broker's transaction file to the person with whom the broker arranged the transaction.*

*Because a willful violation of these provisions by a real estate broker would be a crime, the bill would impose a state-mandated local program.*

*(2) Existing law makes it unlawful for a person to offer or sell any security in an issuer transaction unless the sale has been qualified, as specified, or is exempt.*

*This bill would require an issuer of securities that engages in hard money lending, as defined, to maintain specified records and a surety bond and to establish a contractual agreement, that meets specified requirements, with the person to whom the issuer sells securities for the purpose of investing in mortgage loans.*

*(3) 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.*

~~Existing law states the intent of the Legislature that all existing and proposed consumer-related boards or categories of licensed professionals be subject to a review every 4 years to evaluate and determine whether each board has demonstrated a public need for the continued existence of that board, as specified.~~

~~This bill would make a nonsubstantive, technical change to these provisions.~~

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

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

1     SECTION 1. Section 10239.4 of the Business and Professions  
2     Code, as added by Section 2 of Chapter 901 of the Statutes of 2003,  
3     is amended to read:  
4     10239.4. This article applies only to the exemption from  
5     securities qualification claimed under Section 25102.5 of the  
6     Corporations Code. This article does not apply to any other  
7     exemption from securities qualification, including subdivision (e)  
8     of Section 25102 of the Corporations Code, which may be claimed  
9     without complying with this article, or to any permit to qualify the  
10    offer and sale of securities under the Corporate Securities Law of  
11    1968. A real estate broker, when engaging in acts for which a

1 license is required, who arranges a transaction pursuant to this  
2 article or pursuant to an offering subject to the Corporations Code,  
3 shall clearly indicate in the broker's transaction file the provision  
4 of the Corporate Securities Law of 1968 pertaining to qualification  
5 or exemption from qualification under which the transaction is  
6 being conducted, and shall retain this information for the period  
7 specified in subdivision (a) of Section 10148. *A copy of the*  
8 *information shall be provided to the person with whom the real*  
9 *estate broker arranges the transaction.*

10 *SEC. 2. Section 25119 is added to the Corporations Code, to*  
11 *read:*

12 *25119. (a) An issuer engaging in hard money lending shall*  
13 *satisfy all of the following:*

14 *(1) The issuer shall maintain records required pursuant to*  
15 *Section 10148 of the Business and Professions Code.*

16 *(2) The issuer shall establish a contractual agreement with the*  
17 *person to whom the issuer sells a limited or general partnership,*  
18 *limited liability company, limited liability partnership trust, joint*  
19 *venture, unincorporated association, or similar organization*  
20 *formed and operated for the primary purpose of investing in*  
21 *mortgage loans. The contract shall be signed by the issuer and the*  
22 *person, shall include a plan for the use of the invested moneys,*  
23 *and shall include the disclosures set forth in paragraph (5) of*  
24 *subdivision (k) of, and in subdivision (l) of, Section 10238 of the*  
25 *Business and Professions Code.*

26 *(3) The issuer shall maintain a surety bond for the recovery of*  
27 *expenses, fines, and fees, or for losses or damages, incurred by*  
28 *investors as the result of an issuer's default. All of the following*  
29 *shall apply to the surety bond required under this paragraph:*

30 *(A) The bond shall be in an amount no less than 10 percent of*  
31 *the amount of the total pooled investment.*

32 *(B) An issuer shall not make new investments unless the total*  
33 *value of the pooled investment is covered by a bond meeting the*  
34 *requirements of subparagraph (A). New investments that exceed*  
35 *the bonded capacity of the pooled investment shall only be made*  
36 *when a new bond has been secured to meet the requirements of*  
37 *subparagraph (A) for the expanded investment fund.*

38 *(C) An issuer shall provide the department with evidence on an*  
39 *annual basis indicating that the requirements of subparagraphs*  
40 *(A) and (B) have been satisfied.*

1 (D) An original surety bond, including any and all riders and  
 2 endorsements executed subsequent to the effective date of the bond,  
 3 shall be filed with the department within 10 days of its execution.

4 (b) For purposes of this section, “hard money lending” means  
 5 the offering or selling of a limited or general partnership, limited  
 6 liability company, limited liability partnership trust, joint venture,  
 7 unincorporated association, or similar organization formed and  
 8 operated for the primary purpose of investing in mortgage loans,  
 9 commercial property loans, and construction loans.

10 SEC. 3. No reimbursement is required by this act pursuant to  
 11 Section 6 of Article XIII B of the California Constitution because  
 12 the only costs that may be incurred by a local agency or school  
 13 district will be incurred because this act creates a new crime or  
 14 infraction, eliminates a crime or infraction, or changes the penalty  
 15 for a crime or infraction, within the meaning of Section 17556 of  
 16 the Government Code, or changes the definition of a crime within  
 17 the meaning of Section 6 of Article XIII B of the California  
 18 Constitution.

19 SECTION 1. ~~Section 101.1 of the Business and Professions~~  
 20 ~~Code is amended to read:~~

21 ~~101.1. (a) It is the intent of the Legislature that all existing~~  
 22 ~~and proposed consumer-related boards or categories of licensed~~  
 23 ~~professionals be subject to a review every four years to evaluate~~  
 24 ~~and determine whether each board has demonstrated a public need~~  
 25 ~~for the continued existence of that board in accordance with~~  
 26 ~~enumerated factors and standards as set forth in Division 1.2~~  
 27 ~~(commencing with Section 473).~~

28 ~~(b) (1) In the event that a board, as defined in Section 477,~~  
 29 ~~becomes inoperative or is repealed in accordance with the act that~~  
 30 ~~added this section, or by subsequent acts, the Department of~~  
 31 ~~Consumer Affairs shall succeed to and is vested with all the duties,~~  
 32 ~~powers, purposes, responsibilities and jurisdiction not otherwise~~  
 33 ~~repealed or made inoperative of that board and its executive officer.~~

34 ~~(2) Any provision of existing law that provides for the~~  
 35 ~~appointment of board members and specifies the qualifications~~  
 36 ~~and tenure of board members shall not be implemented and shall~~  
 37 ~~have no force or effect while that board is inoperative or repealed.~~  
 38 ~~Every reference to the inoperative or repealed board, as defined~~  
 39 ~~in Section 477, shall be deemed to be a reference to the department.~~

1     ~~(3) Notwithstanding Section 107, any provision of law~~  
2     ~~authorizing the appointment of an executive officer by a board~~  
3     ~~subject to the review described in Division 1.2 (commencing with~~  
4     ~~Section 473), or prescribing his or her duties, shall not be~~  
5     ~~implemented and shall have no force or effect while the applicable~~  
6     ~~board is inoperative or repealed. Any reference to the executive~~  
7     ~~officer of an inoperative or repealed board shall be deemed to be~~  
8     ~~a reference to the director or his or her designee.~~  
9     ~~(e) It is the intent of the Legislature that subsequent legislation~~  
10    ~~to extend or repeal the inoperative date for any board shall be a~~  
11    ~~separate bill for that purpose.~~