

Assembly Bill No. 1950

Passed the Assembly August 27, 2012

Chief Clerk of the Assembly

Passed the Senate August 22, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10085.6 and 10130 of the Business and Professions Code, to amend Section 2944.7 of the Civil Code, and to amend Section 802 of the Penal Code, relating to business.

LEGISLATIVE COUNSEL’S DIGEST

AB 1950, Davis. Prohibited business practices: enforcement.

(1) Existing law prohibits any person from engaging in the business of, acting in the capacity of, advertising as, or assuming to act as, a real estate broker or a real estate salesperson without first obtaining a real estate license, as specified.

This bill would additionally prohibit any person from engaging in the business of, acting in the capacity of, advertising as, or assuming to act as, a mortgage loan originator without having obtained a license endorsement, as specified.

(2) Existing law, until January 1, 2013, prohibits any person who negotiates or arranges residential mortgage loan modifications, as specified, for a fee, from demanding or receiving preperformance compensation, as specified, or requiring security as collateral or taking a power of attorney from the borrower and makes a violation of that prohibition a misdemeanor subject to specified fines.

Existing law, until January 1, 2013, also prohibits certain conduct by a real estate licensee in connection with a mortgage loan modification or forbearance, including demanding compensation before service is fully performed, taking a lien on property or wage assignment, or taking a power of attorney from the borrower. A violation of those prohibitions is a misdemeanor.

This bill would extend the operation of the above-described provisions indefinitely. By extending the operation of existing crimes, this bill would impose a state-mandated local program.

(3) Existing law provides that any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or any person acting or advertising themselves as a real estate broker, real estate salesperson, or mortgage loan originator without a license or license endorsement, is guilty of a misdemeanor. Existing law requires any person, including a person licensed to

practice law, who performs a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation, as specified, to provide a specified notice to the borrower concerning 3rd parties arranging loan modifications. Existing law also prohibits certain conduct by that person including, among other things, demanding compensation before service is fully performed, taking a lien on property or a wage assignment, or taking a power of attorney from the borrower. Existing law provides that a violation of these requirements or prohibitions is a misdemeanor with specified penalties. Existing law requires that a prosecution for these offenses be commenced within one year of the commission of the offense.

This bill would extend the time to commence a prosecution for these offenses to 3 years from the discovery of the commission of the offense, or within 3 years after completion of the offense, whichever is later.

(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 10085.6 of the Business and Professions Code is amended to read:

10085.6. (a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

SEC. 2. Section 10130 of the Business and Professions Code is amended to read:

10130. It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his or her counsel, deputies, or assistants may assist in presenting the law or facts at the trial.

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.

SEC. 3. Section 2944.7 of the Civil Code is amended to read:

2944.7. (a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person is a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, from doing any of the following:

(1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.

(2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.

(3) Accepting payment from a federal agency in connection with the federal Making Home Affordable Plan or other federal plan intended to help borrowers refinance or modify their loans or otherwise avoid foreclosures.

(d) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

SEC. 4. Section 802 of the Penal Code, as amended by Chapter 43 of the Statutes of 2012, is amended to read:

802. (a) Except as provided in subdivision (b), (c), (d), or (e), prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a committed with or upon a minor under the

age of 14 years shall be commenced within three years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

(d) Prosecution of a misdemeanor violation of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall be commenced as follows:

(1) With respect to Sections 7028.17, 7068.5, and 7068.7 of the Business and Professions Code, within one year of the commission of the offense.

(2) With respect to Sections 7027.1, 7028.1, 7028.15, 7118.4, 7118.5, 7118.6, 7126, 7153, 7156, 7157, 7158, 7159.5 (licensee only), 7159.14 (licensee only), 7161, and 7189 of the Business and Professions Code, within two years of the commission of the offense.

(3) With respect to Sections 7027.3 and 7028.16 of the Business and Professions Code, within three years of the commission of the offense.

(4) With respect to Sections 7028, 7159.5 (nonlicensee only), and 7159.14 (nonlicensee only) of the Business and Professions Code, within four years of the commission of the offense.

(e) Prosecution for a misdemeanor violation of Section 6126, 10085.6, 10139, or 10147.6 of the Business and Professions Code or Section 2944.6 or 2944.7 of the Civil Code shall be commenced within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

SEC. 5. 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 _____, 2012

Governor