

Introduced by Senator Vargas

February 9, 2011

~~An act to amend Section 21200 of the Financial Code, relating to pawnbrokers.~~ *An act to amend Section 22013 of, and to add Section 22065 to, the Financial Code, relating to mortgage loan originators.*

LEGISLATIVE COUNSEL'S DIGEST

SB 217, as amended, Vargas. ~~Pawnbrokers.~~ *California Finance Lenders Law: exemptions: mortgage loan originators.*

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers and mortgage loan originators, as defined, by the Commissioner of Corporations. Existing law exempts from the provisions of the California Finance Lenders Law specified persons and entities, including any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, and insurance premium finance agencies. A willful violation of the California Finance Lenders Law is a crime.

This bill would exempt from the definition of a mortgage loan originator, under the California Finance Lenders Law, an individual who acts as a mortgage loan originator for 5 or fewer residential mortgage loans during a calendar year, if specified requirements are met. The bill would also authorize a person exempt from the provisions of the California Finance Lenders Law to apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators under the federal Secure and Fair Enforcement for Mortgage Licensing

Act of 2008 (SAFE Act) if specified requirements are met, including that the mortgage loan originator is covered under an exclusive written contract with, and originates mortgage loans solely on behalf of, the exempt person. The bill would require an exempt person to comply with all rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act and would require an exempt person to pay an annual registration fee established by the commissioner.

Because a willful violation of these requirements under the California Finance Lenders Law would be a crime, this 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.

~~Existing law prohibits a pawnbroker from charging or receiving compensation at a rate exceeding 2.5% per month on that portion of the unpaid principal balance of any loan up to, including, but not in excess of \$225. For other loan amounts, existing law prohibits a pawnbroker from charging or receiving compensation at a rate exceeding specified amounts based upon the unpaid principal balance of the loan.~~

~~This bill would revise these limits on pawnbroker compensation and would, instead, prohibit a pawnbroker from charging or receiving compensation at a rate exceeding 2.5% per month on the unpaid principal balance of any loan.~~

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 22013 of the Financial Code is amended*
- 2 *to read:*
- 3 22013. (a) "Mortgage loan originator" means an individual
- 4 who, for compensation or gain, or in the expectation of
- 5 compensation or gain, takes a residential mortgage loan application
- 6 or offers or negotiates terms of a residential mortgage loan.
- 7 (b) Mortgage loan originator does not include any of the
- 8 following:

1 (1) An individual who performs purely administrative or clerical
2 tasks on behalf of a person meeting the definition of a mortgage
3 loan originator, except as provided in subdivision (c) of Section
4 22014. The term “administrative or clerical tasks” means the
5 receipt, collection, and distribution of information common for
6 the processing or underwriting of a loan in the mortgage industry
7 and communication with a consumer to obtain information
8 necessary for the processing or underwriting of a residential
9 mortgage loan, to the extent that the communication does not
10 include offering or negotiating loan rates or terms, or counseling
11 consumers about residential mortgage loan rates or terms.

12 (2) An individual who solely renegotiates terms for existing
13 mortgage loans held or serviced by his or her employer and who
14 does not otherwise act as a mortgage loan originator, unless the
15 United States Department of Housing and Urban Development or
16 a court of competent jurisdiction determines that the SAFE Act
17 requires such an employee to be licensed as a mortgage loan
18 originator under state laws implementing the SAFE Act.

19 (3) An individual that is solely involved in extensions of credit
20 relating to timeshare plans, as that term is defined in Section
21 101(53D) of Title 11 of the United States Code.

22 (4) An individual licensed as a mortgage loan originator pursuant
23 to the provisions of Article 2.1 (commencing with Section
24 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and
25 Professions Code and the SAFE Act.

26 (5) (A) *An individual who acts as a mortgage loan originator*
27 *for five or fewer residential mortgage loans during a calendar*
28 *year shall not be deemed a mortgage loan originator and shall*
29 *not be required to obtain a mortgage loan originator license from*
30 *the commissioner if all of the following requirements are met:*

31 (i) *The individual acts as a mortgage loan originator on behalf*
32 *of a single licensee.*

33 (ii) *The licensee on whose behalf the individual acts brokers*
34 *the loans exclusively to a single depository institution.*

35 (iii) *Before authorizing the individual to originate mortgage*
36 *loans on its behalf, the licensee submits the name of the individual*
37 *to the commissioner; agrees in writing, on a form acceptable to*
38 *the commissioner, to be accountable for the actions of the*
39 *individual in connection with the loan origination; and provides*

1 any other information to the commissioner about the individual
2 that the commissioner may request.

3 (B) Any licensee that becomes aware of an individual who is
4 originating residential mortgage loans on its behalf and who has
5 exceeded the five loan per calendar year threshold shall
6 immediately notify the commissioner and shall direct the individual
7 to cease engaging in mortgage loan originator activity, until he
8 or she obtains a mortgage loan originator license.

9 (C) Notwithstanding Sections 22004 and 22059, a licensee may
10 broker loans to a depository institution.

11 (D) The exclusion from licensing provided by this paragraph
12 shall not apply if the Director of the federal Consumer Financial
13 Protection Bureau or a court of competent jurisdiction makes a
14 final and specific determination that this paragraph does not
15 comply with the requirements of Section 1508 of the SAFE Act (12
16 U.S.C. Sec. 5107).

17 (c) “Registered mortgage loan originator” means any individual
18 who is all of the following:

19 (1) Meets the definition of mortgage loan originator.

20 (2) Is an employee of a depository institution, a subsidiary that
21 is owned and controlled by a depository institution and regulated
22 by a federal banking agency, or an institution regulated by the
23 Farm Credit Administration.

24 (3) Is registered with, and maintains a unique identifier through,
25 the Nationwide Mortgage Licensing System and Registry.

26 (d) “Loan processor or underwriter” means an individual who
27 performs clerical or support duties as an employee at the direction
28 of, and subject to the supervision and instruction of, a mortgage
29 loan originator licensed by the state or a registered mortgage loan
30 originator.

31 SEC. 2. Section 22065 is added to the Financial Code, to read:

32 22065. (a) Persons not subject to this division may apply to
33 the commissioner for an exempt company registration for the
34 purpose of sponsoring one or more individuals required to be
35 licensed as mortgage loan originators pursuant to the SAFE Act.
36 A mortgage loan originator eligible for licensure pursuant to this
37 section shall meet all of the following requirements:

38 (1) Be covered under an exclusive written contract with, and
39 originate mortgage loans solely on behalf of, that exempt person.

1 (2) *Be a licensed insurance producer in good standing under*
2 *Article 3 (commencing with Section 1631) of Chapter 5 of Part 2*
3 *of Division 1 of the Insurance Code.*

4 (3) *Hold a license from the Insurance Commissioner as an*
5 *insurance producer for an insurer that controls, is controlled by,*
6 *or is under common control with that exempt person.*

7 (b) *An exempt person shall comply with all rules and orders*
8 *that the commissioner deems necessary to ensure compliance with*
9 *the SAFE Act and shall pay an annual registration fee established*
10 *by the commissioner.*

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

20 ~~SECTION 1. Section 21200 of the Financial Code is amended~~
21 ~~to read:~~

22 ~~21200. (a) Except as otherwise provided in this chapter, no~~
23 ~~pawnbroker shall charge or receive compensation at a rate~~
24 ~~exceeding the sum of the following:~~

25 ~~(1) Two and one-half percent per month on the unpaid principal~~
26 ~~balance of any loan.~~

27 ~~(2) A charge not exceeding three dollars (\$3) a month on any~~
28 ~~loan when the monthly charge permitted by this section would~~
29 ~~otherwise be less than that minimum charge.~~

30 ~~(b) One month's interest may be charged for any part of the~~
31 ~~month in which pawned property is redeemed.~~