

AMENDED IN ASSEMBLY AUGUST 25, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 16, 2011

SENATE BILL

No. 217

Introduced by Senator Vargas

February 9, 2011

An act to amend Section 10166.05 of the Business and Professions Code, and to amend Sections 22109.1 and 50141 of, and to add Section 22065 to, the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

SB 217, as amended, Vargas. Mortgage loan originators: licensure.

(1) Existing law provides for the licensure and regulation of mortgage loan originators, as defined, by the Commissioner of Corporations under the California Finance Lenders Law and the California Residential Mortgage Lending Act. Existing law requires a real estate license endorsement by the Real Estate Commissioner under the Real Estate Law for a real estate licensee to engage in the business of a mortgage loan originator. Existing law prohibits the issuance of a mortgage loan originator license or a license endorsement to act as a mortgage loan originator if the applicant for a license or license endorsement has been convicted of, or pled guilty or nolo contendere to, a felony during the 7-year period preceding the date of the application for licensing or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering.

This bill would provide that an expunged or pardoned felony conviction does not require denial of a license or license endorsement

but would authorize the consideration of the underlying crime, facts, or circumstances of the expunged or pardoned felony conviction when determining whether to issue a license or license endorsement, as specified.

(2) 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 authorize a person exempt from the provisions of the California Finance Lenders Law to apply to the Commissioner of Corporations 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 federal SAFE Act and would require an exempt person to pay an annual registration fee established by the commissioner. *The bill would authorize a licensed mortgage loan originator who is an insurance producer to originate loans on behalf of an exempt person or on behalf of a licensed finance lender that originates loans for an exempt person, as specified.*

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.

(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.

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

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

1 SECTION 1. Section 10166.05 of the Business and Professions
2 Code is amended to read:

3 10166.05. Notwithstanding any other provision of law, the
4 commissioner shall not issue a license endorsement to act as a
5 mortgage loan originator to an applicant unless the commissioner
6 makes all of the following findings:

7 (a) The applicant has never had a mortgage loan originator
8 license revoked in any governmental jurisdiction, except that a
9 subsequent formal vacation of a revocation shall not be deemed a
10 revocation.

11 (b) (1) The applicant has not been convicted of, or pled guilty
12 or nolo contendere to, a felony in a domestic, foreign, or military
13 court during the seven-year period preceding the date of the
14 application for licensing, or at any time preceding the date of
15 application, if the felony involved an act of fraud, dishonesty, a
16 breach of trust, or money laundering. Whether a particular crime
17 is classified as a felony shall be determined by the law of the
18 jurisdiction in which an individual is convicted.

19 (2) For purposes of this subdivision, an expunged or pardoned
20 felony conviction shall not require denial of an application.
21 However, the commissioner may consider the underlying crime,
22 facts, or circumstances of an expunged or pardoned felony
23 conviction when determining the eligibility of an applicant for
24 licensure under this subdivision or subdivision (c).

25 (c) The applicant has demonstrated such financial responsibility,
26 character, and general fitness as to command the confidence of
27 the community and warrant a determination that the mortgage loan
28 originator will operate honestly, fairly, and efficiently within the
29 purposes of the article.

30 (d) The applicant has complied with the education and written
31 testing requirements in Section 10166.06.

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

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

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

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

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

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

13 (c) *A licensed mortgage loan originator who is an insurance*
14 *producer for an insurer authorized to do business in this state may*
15 *originate loans on behalf of a person registered pursuant to*
16 *subdivision (a) or on behalf of a licensed finance lender that*
17 *originates loans exclusively for a single person that is not subject*
18 *to licensure pursuant to subdivision (a) of Section 22050.*

19 SEC. 3. Section 22109.1 of the Financial Code is amended to
20 read:

21 22109.1. (a) The commissioner shall deny an application for
22 a mortgage loan originator license unless the commissioner makes,
23 at a minimum, the following findings:

24 (1) The applicant has never had a mortgage loan originator
25 license revoked in any governmental jurisdiction, except that a
26 subsequent formal vacation of a revocation shall not be deemed a
27 revocation.

28 (2) (A) The applicant has not been convicted of, or pled guilty
29 or nolo contendere to, a felony in a domestic, foreign, or military
30 court during the seven-year period preceding the date of the
31 application for licensing and registration, or at any time preceding
32 the date of application, if the felony involved an act of fraud,
33 dishonesty, or a breach of trust, or money laundering. Whether a
34 particular crime is classified as a felony shall be determined by
35 the law of the jurisdiction in which an individual is convicted.

36 (B) For purposes of this paragraph, an expunged or pardoned
37 felony conviction shall not require denial of an application.
38 However, the commissioner may consider the underlying crime,
39 facts, or circumstances of an expunged or pardoned felony

1 conviction when determining the eligibility of an applicant for
2 licensure under this paragraph or paragraph (3).

3 (3) The applicant has demonstrated such financial responsibility,
4 character, and general fitness as to command the confidence of
5 the community and to warrant a determination that the mortgage
6 loan originator will operate honestly, fairly, and efficiently within
7 the purposes of this division.

8 (4) The applicant has completed the prelicensing education
9 requirement described in Section 22109.2.

10 (5) The applicant has passed a written test that meets the test
11 requirement described in Section 22109.3.

12 (6) The applicant is employed by, and subject to the supervision
13 of, a finance lender or broker that has obtained a license from the
14 commissioner pursuant to this division.

15 (b) Before denying a license under this section, the
16 commissioner shall proceed as prescribed by Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of Title
18 2 of the Government Code and shall have all the powers granted
19 under that chapter.

20 SEC. 4. Section 50141 of the Financial Code is amended to
21 read:

22 50141. (a) The commissioner shall deny an application for a
23 mortgage loan originator license unless the commissioner makes
24 at a minimum the following findings:

25 (1) The applicant has never had a mortgage loan originator
26 license revoked in any governmental jurisdiction, except that a
27 subsequent formal vacation or set aside of such revocation shall
28 not be deemed a revocation.

29 (2) (A) The applicant has not been convicted of, or pled guilty
30 or nolo contendere to, a felony in a domestic, foreign, or military
31 court during the seven-year period preceding the date of the
32 application for licensing and registration, or at any time preceding
33 the date of application, if such felony involved an act of fraud,
34 dishonesty, a breach of trust, or money laundering. Whether a
35 particular crime is classified as a felony shall be determined by
36 the law of the jurisdiction in which an individual is convicted.

37 (B) For purposes of this paragraph, an expunged or pardoned
38 felony conviction shall not require denial of an application.
39 However, the commissioner may consider the underlying crime,
40 facts, or circumstances of an expunged or pardoned felony

1 conviction when determining the eligibility of an applicant for
2 licensure under this paragraph or paragraph (3).

3 (3) The applicant has demonstrated such financial responsibility,
4 character, and general fitness as to command the confidence of
5 the community and to warrant a determination that the mortgage
6 loan originator will operate honestly, fairly, and efficiently within
7 the purposes of this division.

8 (4) The applicant has completed the prelicensing education
9 requirement described in Section 50142.

10 (5) The applicant has passed a written test that meets the test
11 requirements described in Section 50143.

12 (6) The applicant is employed by, and subject to the supervision
13 of, a residential mortgage lender or servicer that has obtained a
14 license from the commissioner pursuant to this division.

15 (7) The surety bond of the residential mortgage lender or servicer
16 employing the applicant covers the activities of the applicant and
17 meets the requirements of Section 50205.

18 (b) Before denying a license under this section, the
19 commissioner shall proceed as prescribed by Chapter 5
20 (commencing with Section 11500) of Part 1 of Division 3 of Title
21 2 of the Government Code and shall have all the powers granted
22 under that chapter.

23 SEC. 5. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.