

Senate Bill No. 217

CHAPTER 444

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.

[Approved by Governor October 3, 2011. Filed with
Secretary of State October 3, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 217, 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.

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

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

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

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

(b) (1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-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. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

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

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

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

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

22065. (a) Persons not subject to this division may 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 pursuant to the federal SAFE Act. A mortgage loan originator eligible for licensure pursuant to this section shall meet all of the following requirements:

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

(2) Hold a current insurance producer license under Article 3 (commencing with Section 1631) of Chapter 5 of Part 2 of Division 1 of the Insurance Code that is not suspended or revoked.

(3) Have a current notice of appointment under Article 9 (commencing with Section 1702) of Chapter 5 of Part 2 of Division 1 of the Insurance Code from an insurer that controls, is controlled by, or is under common control with that exempt person.

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

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

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

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

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

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

(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator

will operate honestly, fairly, and efficiently within the purposes of this division.

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

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

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

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

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

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

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

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

(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

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

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

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

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

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

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

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.