

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1284

Introduced by Senator Lieu

February 23, 2012

An act ~~relating to residential mortgage lending~~, to amend Section 1094 of, and to add Section 1094.5 to, the Unemployment Insurance Code, relating to disclosure of information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1284, as amended, Lieu. ~~Residential mortgage lending: compliance with federal law. Unemployment insurance: disclosure of information.~~

Existing law provides that information obtained in the administration of the Unemployment Insurance Code is confidential and is for the exclusive use and information of the director in the discharge of his or her duties. Existing law authorizes an employee to receive his or her wage information upon written request by the employee. Existing law provides that a person who knowingly accesses, uses, or discloses confidential information without authorization is guilty of a misdemeanor.

This bill would allow the Director of Employment Development to electronically transmit wage information of an employee to a creditor, upon the execution of a release by an employee, if specified requirements are met. By expanding the crime of knowingly and wrongfully accessing, using, or disclosing specified information, 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 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 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.~~

~~This bill would declare the intent of the Legislature to enact legislation that would enhance compliance with specified federal verification requirements for residential mortgage lending.~~

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. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Existing state law allows a person employed in California*
4 *access to his or her wage information for any purpose at no cost*
5 *upon written request.*

6 *(b) The time, inconvenience, and cost to the state of providing*
7 *this access are prohibitive and unnecessary given the capabilities*
8 *of secure electronic access methods currently available.*

9 *(c) The mortgage and subprime credit crises have brought to*
10 *the forefront the problems associated with the lack of reliable,*
11 *comprehensive, secure, convenient, and cost-effective solutions to*
12 *accurately and fairly determine the credit capacity of consumers*
13 *by verifying income and employment. As a result, the following*
14 *occur:*

15 *(1) Consumer credit has tightened dramatically thus adding to*
16 *the problems with the stagnating and retracting economy. In the*
17 *previous four recessions, outstanding consumer credit had never*
18 *declined by more than 2 percent. In 2008, this figure was an*
19 *unprecedented 5.4 percent. American consumers lost nearly \$14*
20 *trillion in assets in 2008 alone because of the credit crisis.*

1 (2) Credit is denied to an individual that understates his or her
2 income. Creditors attempting to verify income rely on frequently
3 inaccurate estimators that are routinely misstated by \$10,000 to
4 \$15,000, inclusive, on annual wages. Given that 75 percent of
5 working Americans earn \$50,000 per annum or less, these
6 inaccuracies can have serious consequences.

7 (3) Credit is denied to the approximately 35 to 54 million
8 Americans who have no, little, or borderline credit histories.
9 Supplementing credit history with wage and employment history
10 gives creditors greater confidence in a borrower's ability to repay
11 a debt obligation, and may even offset derogatory information.

12 (4) Credit is granted to an individual who overstates his or her
13 income, possibly resulting in overextensions, collections,
14 repossessions, or bankruptcy. As the recent mortgage meltdown
15 and ensuing global financial crisis underscore, consumers can be
16 substantially and materially harmed if they are able to access more
17 credit than they can afford. Verifying income and employment
18 history offers a consumer protection as it would dramatically
19 reduce the frequency of over extension.

20 (5) Credit, mortgage, and identification theft losses exceed many
21 billions of dollars annually in the United States. Requiring a
22 prospective borrower to provide employment and income
23 information provides another data point to use in efforts to prevent
24 identity fraud.

25 (d) The federal government responded to the mortgage meltdown
26 and financial crisis with the Dodd-Frank Financial Reform and
27 Consumer Protection Act (Public Law 111-203) and Regulation
28 Z (Section 226.1 et seq. of Part 226 of Subchapter A of Chapter
29 II of Title 12 of the Code of Federal Regulations), requiring income
30 verification on all home mortgages, and the Credit Card
31 Accountability Responsibility and Disclosure Act of 2009 (Public
32 Law 111-24), requiring credit card issuers to assess the ability of
33 a consumer to repay a new credit transaction.

34 (e) Access to secure, reliable, comprehensive, convenient, and
35 cost-effective solutions has not been available. Current solutions
36 either are inaccurate, costly, or have limited workforce coverage.
37 Creditors still struggle to comply with new federal requirements.

38 SEC. 2. Section 1094 of the Unemployment Insurance Code is
39 amended to read:

1 1094. (a) Except as otherwise specifically provided in this
2 code, the information obtained in the administration of this code
3 is confidential, not open to the public, and shall be for the exclusive
4 use and information of the director in discharge of his or her duties.

5 (b) The information released to authorized entities pursuant to
6 other provisions of the code shall not be admissible in evidence
7 in any action or special proceeding, other than one arising out of
8 the provisions of this code or one described in Section 1095.

9 (c) The information may be tabulated and published in statistical
10 form for use by federal, state, and local governmental departments
11 and agencies, and the public, except that the name of the employing
12 unit or of any worker shall never be divulged in the course of the
13 tabulation or publication.

14 (d) Wages as defined by Section 13009 and amounts required
15 to be deducted and withheld under Section 13020 shall not be
16 disclosed except as provided in Article 2 (commencing with
17 Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the
18 Revenue and Taxation Code.

19 (e) (1) ~~Any~~ An employee or his or her representative may
20 receive his or her wage information upon written request by the
21 employee. The information shall be provided without charge.

22 (2) *In order to provide an employee with expedited access to*
23 *his or her wage information, the director may allow, upon an*
24 *employee providing a release as described in Section 1094.5, the*
25 *electronic transmission of wage information to a creditor for the*
26 *purpose of a credit transaction specified in the release.*

27 (f) ~~Any~~ A person who knowingly accesses, uses, or discloses
28 any confidential information without authorization is in violation
29 of this section and is guilty of a misdemeanor.

30 *SEC. 3. Section 1094.5 is added to the Unemployment*
31 *Insurance Code, to read:*

32 *1094.5. If the director allows the conveyance of wage*
33 *information pursuant to paragraph (2) of subdivision (e) of Section*
34 *1094, all of the following shall apply:*

35 (a) *The information provided shall only be used to verify the*
36 *accuracy of wage information provided to the creditor by an*
37 *employee in connection with a specific credit transaction.*

38 (b) *All state and federal privacy laws shall be met.*

- 1 (c) *The information shall only be used to satisfy standard*
2 *underwriting requirements imposed by the creditor for that specific*
3 *credit transaction.*
- 4 (d) (1) *An employee's wage information shall only leave a*
5 *department database on an individual inquiry basis and shall not*
6 *be grouped together with other employee's wage information.*
- 7 (2) *Data removed from the dedicated department database shall*
8 *be encrypted at the field level, and shall not contain any personal*
9 *identifying information.*
- 10 (3) *The department's database shall not leave the physical*
11 *premises of the Employment Development Department.*
- 12 (e) *The information shall only be transmitted as an individual*
13 *record and shall not be transmitted with additional data.*
- 14 (f) *A copy of the information and an explanation of the purpose*
15 *for which the information was furnished shall be provided to the*
16 *employee.*
- 17 (g) *The form of release made by an employee pursuant to*
18 *paragraph (2) of subdivision (e) of Section 1094 shall comply with*
19 *Section 603.5(d)(2) of Part 603 of Chapter V of Title 20 of the*
20 *Code of Federal Regulations and additionally include the following*
21 *information:*
- 22 (1) *The employee's consent to disclose is voluntary and not*
23 *required by law.*
- 24 (2) *The employee's refusal to consent to disclosure of this wage*
25 *information shall not be the basis for denial of credit.*
- 26 (3) *If the employee's release is provided, the department shall*
27 *release, the wage information of the employee.*
- 28 (4) *The release shall be only for the credit transaction identified*
29 *by the employee on the release.*
- 30 (5) *The length of time the consent shall be valid following the*
31 *execution of the release by the employee.*
- 32 (6) *A statement indicating the person or persons that are*
33 *authorized to receive the information released.*
- 34 (h) *The director shall establish audit and security requirements*
35 *deemed necessary or appropriate by the director to safeguard the*
36 *confidentiality of the information released.*
- 37 (i) *Prior to implementing paragraph (2) of subdivision (e) of*
38 *Section 1094, the director shall evaluate the best practices and*
39 *system weaknesses of similar programs in other states.*

1 (j) *The director may convene a group consisting of*
2 *representatives from consumer privacy groups, creditors, and*
3 *employee and employer organizations to advise him or her and*
4 *the department on the best practices and weaknesses of a program*
5 *of this nature.*

6 (k) (1) *The director may enter into a contract with a consumer*
7 *reporting agency to implement this section. The director may*
8 *require reimbursement for all costs incurred in providing*
9 *information specified in this section.*

10 (2) *An employee shall not be charged for submitting the release*
11 *for the costs of transmitting his or her information directly to a*
12 *creditor for the purpose of a credit transaction.*

13 (l) *The department may promulgate regulations as necessary*
14 *or appropriate to implement this section.*

15 (m) (1) *A person who knowingly and wrongfully accesses, uses,*
16 *or discloses information under this section is guilty of a*
17 *misdemeanor.*

18 (2) *A person injured by a violation of this section may bring a*
19 *civil action to recover damages, attorney's fees, and costs of*
20 *litigation.*

21 (n) *For purposes of this section:*

22 (1) *“Consumer reporting agency” has the same meaning as set*
23 *forth in the federal Fair Credit Reporting Act (15 U.S.C. Sec.*
24 *1681a(f)).*

25 (2) *“Creditor” has the same meaning as set forth in the federal*
26 *Fair Debt Collection Practices Act (15 U.S.C. Sec. 1691a(e)).*

27 *SEC. 4. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

36 ~~SECTION 1. It is the intent of the Legislature to enact~~
37 ~~legislation that would enhance compliance with income and~~

- 1 ~~employment verification requirements for residential mortgage~~
- 2 ~~lending.~~

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