

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1091

Introduced by Assembly Member Skinner

February 22, 2013

An act to amend Section 22050 of, and to add Sections 22173, 22707.5, 22709.5, and 50501.5 to, the Financial Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 1091, as amended, Skinner. Finance and mortgage lenders.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers. Existing law, the California Residential Mortgage Lending Act, provides for the regulation and licensure of residential mortgage lenders, servicers, and originators. Existing law makes the Commissioner of Corporations responsible for administering the law and act until July 1, 2013, and thereafter the Deputy Commissioner of Business Oversight for the Division of Corporations will be responsible, pursuant to the Governor's Reorganization Plan No. 2 of 2012. A willful violation of the law or act is a crime.

Existing law exempts, among others, California business and industrial development corporations, licensed pawnbrokers, and persons making no more than one commercial loan in a 12-month period from the California Finance Lenders Law.

This bill would exempt from the California Finance Lenders Law California business and industrial development corporations when acting

under federal law or other state authority, licensed pawnbrokers when acting under the authority of that license, and persons making no more than 5 commercial loans in a 12-month period as long as the loans are incidental to the business of the person relying on the exemption. The bill would, among other things, prohibit a finance lender or broker from knowingly misrepresenting any material information regarding a transaction and committing any act that constitutes fraud or dishonest dealings. By expanding the definition of a crime, the bill would impose a state-mandated local program.

Upon inspection, examination, or investigation, if the commissioner has cause to believe that a licensee under the California Finance Lenders Law or the California Residential Mortgage Lending Act is violating *or has violated* the respective law applicable to the licensee, or that any other person is violating those laws, the bill would authorize the commissioner *or his or her designee* to issue a *written* citation to the licensee or person that may contain an order to ~~desist and refrain~~ *correct the violation or violations* and an assessment of an administrative ~~penalty~~ *fine* not to exceed \$2,500 ~~per violation~~. The bill would require the commissioner, if the commissioner after investigation has reasonable grounds to believe that a finance lender or broker is conducting business in an unsafe or injurious manner, to issue a written order directing the discontinuance of the unsafe or injurious practice.

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 22050 of the Financial Code is amended
- 2 to read:
- 3 22050. (a) This division does not apply to any person doing
- 4 business under any law of any state or of the United States relating
- 5 to banks, trust companies, savings and loan associations, insurance
- 6 premium finance agencies, credit unions, small business investment
- 7 companies, community advantage lenders, California business and
- 8 industrial development corporations when acting under federal

1 law or other state authority, or licensed pawnbrokers when acting
2 under the authority of that license.

3 “Community advantage lender” means an entity authorized by
4 the United States Small Business Administration to deliver
5 community advantage loans.

6 (b) This division does not apply to a check casher who holds a
7 valid permit issued pursuant to Section 1789.37 of the Civil Code
8 when acting under the authority of that permit, and shall not apply
9 to a person holding a valid license issued pursuant to Section 23005
10 of the Financial Code when acting under the authority of that
11 license.

12 (c) This division does not apply to a college or university making
13 a loan for the purpose of permitting a person to pursue a program
14 or course of study leading to a degree or certificate.

15 (d) This division does not apply to a broker-dealer acting
16 pursuant to a certificate then in effect and issued pursuant to
17 Section 25211 of the Corporations Code.

18 (e) This division does not apply to any person who makes no
19 more than five loans in a 12-month period, these loans are
20 commercial loans as defined in Section 22502, and the loans are
21 incidental to the business of the person relying upon the exemption.

22 (f) This division does not apply to any public corporation as
23 defined in Section 67510 of the Government Code, any public
24 entity other than the state as defined in Section 811.2 of the
25 Government Code, or any agency of any one or more of the
26 foregoing, when making any loan so long as the public corporation,
27 public entity, or agency of any one or more of the foregoing
28 complies with all applicable federal and state laws and regulations.

29 SEC. 2. Section 22173 is added to the Financial Code, to read:
30 22173. A licensee shall not do any of the following:

31 (a) Commit an act in violation of Section 1695.13 of the Civil
32 Code.

33 (b) Engage in any acts in violation of Section 17200 or 17500
34 of the Business and Professions Code.

35 (c) Knowingly misrepresent, circumvent, or conceal, through
36 subterfuge or device, any material aspect or information regarding
37 a transaction to which the licensee is a party.

38 (d) Commit an act that constitutes fraud or dishonest dealings.

39 SEC. 3. Section 22707.5 is added to the Financial Code, to
40 read:

1 22707.5. (a) If, upon inspection, examination, or investigation,
2 the commissioner has cause to believe that a licensee or *other*
3 person is violating any provision of this division or any rule or
4 order thereunder, the commissioner *or his or her designee*, may
5 issue a citation to the licensee or person in writing, describing with
6 particularity the basis of the citation. Each citation may contain
7 an order to ~~desist and refrain and an assessment of an~~
8 ~~administrative penalty~~ *correct the violation or violations identified*
9 *and provide a reasonable time period or periods by which the*
10 *violation or violations must be corrected. In addition, each citation*
11 *may assess an administrative fine not to exceed two thousand five*
12 *hundred dollars (\$2,500) ~~per violation. All penalties collected~~*
13 ~~under this section~~ *that shall be deposited in the State Corporations*
14 *Fund. In assessing a fine, the commissioner shall give due*
15 *consideration to the appropriateness of the amount of the fine with*
16 *respect to factors including the gravity of the violation, the good*
17 *faith of the person or licensees cited, and the history of previous*
18 *violations. A citation issued or a fine assessed pursuant to this*
19 *section, while constituting punishment for a violation of law, shall*
20 *be in lieu of other administrative discipline by the commissioner*
21 *for the offense or offenses cited, and the citation and fine payment*
22 *thereof by a licensee shall not be reported as disciplinary action*
23 *taken by the commissioner.*

24 (b) ~~The~~ *Notwithstanding subdivision (a), nothing in this section*
25 *shall prevent the commissioner from issuing an order to desist and*
26 *refrain from engaging in a specific business or activity or activities,*
27 *or an order to suspend all business operations to a person or*
28 *licensee who is engaged in or who has engaged in continued or*
29 *repeated violations of this division. In any of these circumstances,*
30 *the sanctions authorized under this section shall be separate from,*
31 *and in addition to, all other administrative, civil, or criminal*
32 *remedies.*

33 (c) If, within 30 days from the receipt of the citation, the licensee
34 or person cited fails to notify the department that he or she intends
35 to request a hearing as described in subdivision (d), the citation
36 shall be deemed final.

37 (d) Any hearing under this section shall be conducted in
38 accordance with Chapter 5 (commencing with Section 11500) of
39 Part 1 of Division 3 of Title 2 of the Government Code.

1 (e) After the exhaustion of the review procedures provided for
2 in this section, the commissioner may apply to the appropriate
3 superior court for a judgment in the amount of the administrative
4 penalty and an order compelling the cited licensee or person to
5 comply with the order of the commissioner. The application, which
6 shall include a certified copy of the final order of the commissioner,
7 shall constitute a sufficient showing to warrant the issuance of the
8 judgment and order.

9 SEC. 4. Section 22709.5 is added to the Financial Code, to
10 read:

11 22709.5. If, after investigation, the commissioner has
12 reasonable grounds to believe that any licensee is conducting
13 business in an unsafe or injurious manner, the commissioner shall,
14 by written order addressed to the licensee, direct the discontinuance
15 of the unsafe or injurious practices. The order shall be effective
16 immediately, but shall not become final except in accordance with
17 the provisions of Section 22717.

18 SEC. 5. Section 50501.5 is added to the Financial Code, to
19 read:

20 50501.5. (a) If, upon inspection, examination, or investigation,
21 ~~the department~~ *commissioner* has cause to believe that a licensee
22 or person is violating *or has violated* any provision of this division
23 or any rule or order thereunder, the commissioner *or his or her*
24 *designee* may issue a citation to that *licensee or person* in writing,
25 describing with particularity the basis of the citation. Each citation
26 may contain an order to ~~desist and refrain and an assessment of~~
27 ~~an administrative penalty~~ *correct the violation or violations*
28 *identified and provide a reasonable time period or periods by*
29 *which the violation or violations must be corrected. In addition,*
30 *each citation may assess an administrative fine not to exceed two*
31 *thousand five hundred dollars (\$2,500) per violation. All penalties*
32 ~~collected under this section~~ *that shall be deposited in the State*
33 *Corporations Fund. In assessing a fine, the commissioner shall*
34 *give due consideration to the appropriateness of the amount of the*
35 *fine with respect to factors including the gravity of the violation,*
36 *the good faith of the person or licensees cited, and the history of*
37 *previous violations. A citation issued and a fine assessed pursuant*
38 *to this section, while constituting punishment for a violation of*
39 *law, shall be in lieu of other administrative discipline by the*
40 *commissioner for the offense or offenses cited, and the citation*

1 *and fine payment thereof by a licensee shall not be reported as*
2 *disciplinary action taken by the commissioner.*

3 (b) ~~The~~ *Notwithstanding subdivision (a), nothing in this section*
4 *shall prevent the commissioner from issuing an order to desist and*
5 *refrain from engaging in a specific business or activity or activities,*
6 *or an order to suspend all business operations to a person or*
7 *licensee who is engaged in or who has engaged in continued or*
8 *repeated violations of this division. In any of these circumstances,*
9 *the sanctions authorized under this section shall be separate from,*
10 *and in addition to, all other administrative, civil, or criminal*
11 *remedies.*

12 (c) *If, within 30 days from the receipt of the citation, the person*
13 *cited fails to notify the department that the person intends to request*
14 *a hearing as described in subdivision (d), the citation shall be*
15 *deemed final.*

16 (d) *Any hearing under this section shall be conducted in*
17 *accordance with Chapter 5 (commencing with Section 11500) of*
18 *Part 1 of Division 3 of Title 2 of the Government Code.*

19 (e) *After the exhaustion of the review procedures provided for*
20 *in this section, the commissioner may apply to the appropriate*
21 *superior court for a judgment in the amount of the administrative*
22 *penalty and an order compelling the cited person to comply with*
23 *the order of the commissioner. The application, which shall include*
24 *a certified copy of the final order of the commissioner, shall*
25 *constitute a sufficient showing to warrant the issuance of the*
26 *judgment and order.*

27 SEC. 6. *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.*

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