

AMENDED IN SENATE JUNE 25, 2013

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~~ *Sections 22050, 22161, and 22712* of, and to add Sections ~~22173, 22707.5, 22709.5,~~ *22707.5* 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~~ *or fewer* 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~~ *person, subject to the California Finance Lenders Law*, 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 correct the violation or violations and an assessment of an administrative fine not to exceed \$2,500. The bill would require the commissioner, if the commissioner after investigation has reasonable grounds to believe that a ~~finance lender or broker~~ *person* is conducting business *under the California Finance Lenders Law* 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

1 premium finance agencies, credit unions, small business investment
2 companies, community advantage lenders, California business and
3 industrial development corporations when acting under federal
4 law or other state authority, or licensed pawnbrokers when acting
5 under the authority of that license.

6 “Community advantage lender” means an entity authorized by
7 the United States Small Business Administration to deliver
8 community advantage loans.

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

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

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

21 (e) This division does not apply to any person who makes ~~no~~
22 ~~more than five~~ *five or fewer* loans in a 12-month period, these
23 loans are commercial loans as defined in Section 22502, and the
24 loans are incidental to the business of the person relying upon the
25 exemption.

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

33 ~~SEC. 2. Section 22173 is added to the Financial Code, to read:~~
34 ~~22173. A licensee shall not do any of the following:~~

35 ~~(a) Commit an act in violation of Section 1695.13 of the Civil~~
36 ~~Code.~~

37 ~~(b) Engage in any acts in violation of Section 17200 or 17500~~
38 ~~of the Business and Professions Code.~~

1 ~~(e) Knowingly misrepresent, circumvent, or conceal, through~~
2 ~~subterfuge or device, any material aspect or information regarding~~
3 ~~a transaction to which the licensee is a party.~~

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

5 SEC. 2. Section 22161 of the Financial Code is amended to
6 read:

7 22161. ~~(a) No person shall make~~ *No person subject to this*
8 *division shall do any of the following:*

9 (a) *Make a materially false or misleading statement or*
10 *representation to a borrower about the terms or conditions of that*
11 *borrower’s loan, when making or brokering the loan.*

12 (b) ~~No person shall advertise, Advertise,~~ *print, display, publish,*
13 *distribute, or broadcast, or cause or permit to be advertised, printed,*
14 *displayed, published, distributed, or broadcast in any manner, any*
15 *statement or representation with regard to the business subject to*
16 *the provisions of this division, including the rates, terms, or*
17 *conditions for making or negotiating loans, that is false, misleading,*
18 *or deceptive, or that omits material information that is necessary*
19 *to make the statements not false, misleading, or deceptive, or in*
20 *the case of a licensee, that refers to the supervision of the business*
21 *by the state or any department or official of the state.*

22 (c) *Commit an act in violation of Section 1695.13 of the Civil*
23 *Code.*

24 (d) *Engage in any act in violation of Section 17200 of the*
25 *Business and Professions Code.*

26 (e) *Knowingly misrepresent, circumvent, or conceal, through*
27 *subterfuge or device, any material aspect or information regarding*
28 *a transaction to which the person is a party.*

29 (f) *Commit an act that constitutes fraud or dishonest dealings.*

30 SEC. 3. Section 22707.5 is added to the Financial Code, to
31 read:

32 22707.5. (a) *If, upon inspection, examination, or investigation,*
33 *the commissioner has cause to believe that a licensee or other*
34 *person is violating any provision of this division or any rule or*
35 *order thereunder, the commissioner or his or her designee, may*
36 *issue a citation to the licensee or person in writing, describing with*
37 *particularity the basis of the citation. Each citation may contain*
38 *an order to correct the violation or violations identified and provide*
39 *a reasonable time period or periods by which the violation or*
40 *violations must be corrected. In addition, each citation may assess*

1 an administrative fine not to exceed two thousand five hundred
2 dollars (\$2,500) that shall be deposited in the State Corporations
3 Fund. In assessing a fine, the commissioner shall give due
4 consideration to the appropriateness of the amount of the fine with
5 respect to factors including the gravity of the violation, the good
6 faith of the person or licensees cited, and the history of previous
7 violations. A citation issued or a fine assessed pursuant to this
8 section, while constituting punishment for a violation of law, shall
9 be in lieu of other administrative discipline by the commissioner
10 for the offense or offenses cited, and the citation and fine payment
11 thereof by a licensee shall not be reported as disciplinary action
12 taken by the commissioner.

13 (b) Notwithstanding subdivision (a), nothing in this section shall
14 prevent the commissioner from issuing an order to desist and
15 refrain from engaging in a specific business or activity or activities,
16 or an order to suspend all business operations to a person or
17 licensee who is engaged in or who has engaged in continued or
18 repeated violations of this division. In any of these circumstances,
19 the sanctions authorized under this section shall be separate from,
20 and in addition to, all other administrative, civil, or criminal
21 remedies.

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

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

29 (e) After the exhaustion of the review procedures provided for
30 in this section, the commissioner may apply to the appropriate
31 superior court for a judgment in the amount of the administrative
32 ~~penalty~~ *fine* and an order compelling the cited licensee or person
33 to comply with the order of the commissioner. The application,
34 which shall include a certified copy of the final order of the
35 commissioner, shall constitute a sufficient showing to warrant the
36 issuance of the judgment and order.

37 ~~SEC. 4. Section 22709.5 is added to the Financial Code, to~~
38 ~~read:~~

39 ~~22709.5. If, after investigation, the commissioner has~~
40 ~~reasonable grounds to believe that any licensee is conducting~~

1 ~~business in an unsafe or injurious manner, the commissioner shall,~~
 2 ~~by written order addressed to the licensee, direct the discontinuance~~
 3 ~~of the unsafe or injurious practices. The order shall be effective~~
 4 ~~immediately, but shall not become final except in accordance with~~
 5 ~~the provisions of Section 22717.~~

6 *SEC. 4. Section 22712 of the Financial Code is amended to*
 7 *read:*

8 22712. (a) Whenever, in the opinion of the commissioner, any
 9 person is engaged in the business as a broker or finance lender, or
 10 a mortgage loan originator, as defined in this division, without a
 11 license from the commissioner, or any licensee is violating any
 12 provision of this division, the commissioner may order that person
 13 or licensee to desist and to refrain from engaging in the business
 14 or further violating this division. If, within 30 days after the order
 15 is served, a written request for a hearing is filed and no hearing is
 16 held within 30 days thereafter, the order is rescinded. For purposes
 17 of this section, “licensee” includes a mortgage loan originator.

18 (b) *Notwithstanding subdivision (a), if, after an investigation,*
 19 *the commissioner has reasonable grounds to believe that a person*
 20 *is conducting business in an unsafe or injurious manner, the*
 21 *commissioner shall, by written order addressed to that person,*
 22 *direct the discontinuance of the unsafe or injurious practices. The*
 23 *order shall be effective immediately, but shall not become final*
 24 *except in accordance with the provisions of Section 22717.*

25 *SEC. 5. Section 50501.5 is added to the Financial Code, to*
 26 *read:*

27 50501.5. (a) If, upon inspection, examination, or investigation,
 28 the commissioner has cause to believe that a licensee or person is
 29 violating or has violated any provision of this division or any rule
 30 or order thereunder, the commissioner or his or her designee may
 31 issue a citation to that licensee or person in writing, describing
 32 with particularity the basis of the citation. Each citation may
 33 contain an order to correct the violation or violations identified
 34 and provide a reasonable time period or periods by which the
 35 violation or violations must be corrected. In addition, each citation
 36 may assess an administrative fine not to exceed two thousand five
 37 hundred dollars (\$2,500) that shall be deposited in the State
 38 Corporations Fund. In assessing a fine, the commissioner shall
 39 give due consideration to the appropriateness of the amount of the
 40 fine with respect to factors including the gravity of the violation,

1 the good faith of the person or licensees cited, and the history of
2 previous violations. A citation issued and a fine assessed pursuant
3 to this section, while constituting punishment for a violation of
4 law, shall be in lieu of other administrative discipline by the
5 commissioner for the offense or offenses cited, and the citation
6 and fine payment thereof by a licensee shall not be reported as
7 disciplinary action taken by the commissioner.

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

17 (c) If, within 30 days from the receipt of the citation, the person
18 cited fails to notify the department that the person intends to request
19 a hearing as described in subdivision (d), the citation shall be
20 deemed final.

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

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

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

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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