

ASSEMBLY BILL

No. 1641

Introduced by Assembly Member Beth Gaines

February 11, 2014

An act to amend Section 22013 of the Financial Code, relating to mortgage loan originators.

LEGISLATIVE COUNSEL'S DIGEST

AB 1641, as introduced, Beth Gaines. Mortgage loan originators.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight. Existing law defines a “mortgage loan originator” and specifies individuals who are not mortgage loan originators, and defines other terms for purposes of the law. Existing law provides that an employee of a bona fide nonprofit organization who exclusively originates loans for a bona fide nonprofit organization, under certain conditions as specified, is not a mortgage loan originator under the California Finance Lenders Law.

This bill would make nonsubstantive changes to that provision.

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

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

1 SECTION 1. Section 22013 of the Financial Code is amended
2 to read:
3 22013. (a) “Mortgage loan originator” means an individual
4 who, for compensation or gain, or in the expectation of

1 compensation or gain, takes a residential mortgage loan application
2 or offers or negotiates terms of a residential mortgage loan.

3 (b) Mortgage loan originator does not include any of the
4 following:

5 (1) An individual who performs purely administrative or clerical
6 tasks on behalf of a person meeting the definition of a mortgage
7 loan originator, except as provided in subdivision (c) of Section
8 22014. The term “administrative or clerical tasks” means the
9 receipt, collection, and distribution of information common for
10 the processing or underwriting of a loan in the mortgage industry
11 and communication with a consumer to obtain information
12 necessary for the processing or underwriting of a residential
13 mortgage loan, to the extent that the communication does not
14 include offering or negotiating loan rates or terms, or counseling
15 consumers about residential mortgage loan rates or terms.

16 (2) An individual who solely renegotiates terms for existing
17 mortgage loans held or serviced by his or her employer and who
18 does not otherwise act as a mortgage loan originator, unless the
19 United States Department of Housing and Urban Development or
20 a court of competent jurisdiction determines that the SAFE Act
21 requires such an employee to be licensed as a mortgage loan
22 originator under state laws implementing the SAFE Act.

23 (3) An individual that is solely involved in extensions of credit
24 relating to timeshare plans, as that term is defined in Section
25 101(53D) of Title 11 of the United States Code.

26 (4) An individual licensed as a mortgage loan originator pursuant
27 to the provisions of Article 2.1 (commencing with Section
28 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and
29 Professions Code and the SAFE Act.

30 (5) An individual who is an employee of a federal, state, or local
31 government agency or housing finance agency and who acts as a
32 loan originator only pursuant to his or her official duties as an
33 employee of the federal, state, or local government agency or
34 housing finance agency.

35 (A) For purposes of this paragraph, the term “employee” means
36 an individual whose manner and means of performance of work
37 are subject to the right of control of, or are controlled by, a person,
38 and whose compensation for federal income tax purposes is
39 reported, or required to be reported, on a W-2 form issued by the
40 controlling person.

1 (B) For purposes of this paragraph, the term “housing finance
2 agency” means any authority:

3 (i) That is chartered by a state to help meet the affordable
4 housing needs of the residents of the state.

5 (ii) That is supervised directly or indirectly by the state
6 government.

7 (iii) That is subject to audit and review by the state in which it
8 operates.

9 (6) (A) An employee of a bona fide nonprofit organization who
10 exclusively originates residential mortgage loans for a bona fide
11 nonprofit organization, and who acts as a mortgage loan originator
12 only with respect to residential mortgage loans with terms that are
13 favorable to the borrower.

14 (B) To qualify for the exemption under this paragraph, the bona
15 fide nonprofit organization ~~under this paragraph~~ must register with
16 the department on a form prescribed by the commissioner, along
17 with documentation of all of the following by December 31 of
18 each year:

19 (i) Status ~~of~~ *as* a tax-exempt organization under Section
20 501(c)(3) of the Internal Revenue Code of 1986.

21 (ii) That the organization promotes affordable housing or
22 provides home ownership education or similar services.

23 (iii) That the organization conducts its activities in a manner
24 that serves public or charitable purposes, rather than commercial
25 purposes.

26 (iv) That the organization receives funding and revenue, and
27 charges fees in a manner that does not incentivize the organization
28 or its employees to act other than in the best interests of its clients.

29 (v) That the organization compensates employees in a manner
30 that does not incentivize employees to act other than in the best
31 interests of its clients.

32 (vi) That the organization provides to, or identifies for, the
33 borrower residential mortgage loans with terms favorable to the
34 borrower and comparable to mortgage loans and housing assistance
35 provided under government housing assistance programs.

36 (vii) That the organization is certified by the United States
37 Department of Housing and Urban Development as a housing
38 counselor who engages solely in traditional housing counseling
39 services, if applicable.

1 (C) The commissioner may periodically require reports
2 regarding the activities of the bona fide nonprofit organization,
3 and shall examine the nonprofit organization’s books and records
4 in accordance with the regulations of the United States Department
5 of Housing and Urban Development, or any successor guidance
6 or requirement by the Consumer Financial Protection Bureau. If
7 the nonprofit organization fails to provide documentation as
8 required by subparagraph (B), or if it does not continue to meet
9 the criteria under subparagraph (B), the commissioner may revoke
10 the nonprofit organization’s status as a registered bona fide
11 nonprofit organization.

12 (D) For residential mortgage loans to have terms that are
13 favorable to the borrower, the terms shall be consistent with loan
14 origination in a public or charitable context, rather than a
15 commercial context.

16 (E) In making its determinations and examinations, the
17 commissioner may rely on the receipt and review of:

18 (i) Reports filed with federal, state, or local housing agencies
19 and authorities.

20 (ii) Reports and attestations prescribed by the commissioner by
21 rule or order.

22 (c) “Registered mortgage loan originator” means any individual
23 who is all of the following:

24 (1) Meets the definition of mortgage loan originator.

25 (2) Is an employee of a depository institution, a subsidiary that
26 is owned and controlled by a depository institution and regulated
27 by a federal banking agency, or an institution regulated by the
28 Farm Credit Administration.

29 (3) Is registered with, and maintains a unique identifier through,
30 the Nationwide Mortgage Licensing System and Registry.

31 (d) “Loan processor or underwriter” means an individual who
32 performs clerical or support duties as an employee at the direction
33 of, and subject to the supervision and instruction of, a mortgage
34 loan originator licensed by the state or a registered mortgage loan
35 originator.