

AMENDED IN ASSEMBLY JUNE 13, 2016

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN SENATE APRIL 21, 2015

SENATE BILL

No. 657

**Introduced by Senator Monning Senators Berryhill and Pan
(Coauthor: Senator Jackson)**

(Principal coauthor: Assembly Member Dababneh)

(Coauthor: Assembly Member Cooley)

February 27, 2015

An act to ~~add Section 712 to the Public Utilities Code, relating to electricity, and declaring the urgency thereof, to take effect immediately. amend Sections 50003 and 50201 of the Financial Code, relating to mortgages.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 657, as amended, ~~Monning Berryhill. Diablo Canyon Units 1 and 2: enhanced seismic studies and review: independent peer review panel. The California Residential Mortgage Lending Act: lenders: licensees.~~

Existing law defines specified terms for purposes of the California Residential Mortgage Lending Act, which generally prohibits a person from engaging in the business of making residential mortgage loans or servicing residential mortgage loans without first obtaining a license from the Commissioner of Business Oversight in accordance with the act. Existing law defines a lender as a person who is an approved lender for the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, who directly makes residential

mortgage loans, and who makes the credit decision in the loan transactions. Existing law requires a licensee issued a license for purposes of making or servicing residential mortgage loans to continuously maintain a minimum tangible net worth of \$250,000.

This bill would specify that the term “lender” includes a person, other than a natural person, and a natural person who is also an independent contractor, who engages in the activities of a loan processor or underwriter for residential mortgage loans. The bill would authorize the commissioner to require a licensee who is engaged in the processing or underwriting of residential mortgage loans to continuously maintain a minimum tangible net worth in an amount that is greater than \$250,000, but that does not exceed the net worth required of an approved lender under the Federal Housing Administration.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires the commission, for purposes of establishing rates for any electrical corporation, to disallow expenses reflecting the direct or indirect costs resulting from any unreasonable error or omission relating to the planning, construction, or operation of any portion of the corporation’s plant which cost, or is estimated to have cost, more than \$50,000,000, including any expenses resulting from delays caused by any unreasonable error or omission. For these purposes, “planning” includes activities related to the initial and subsequent assessments of the need for a plant construction project and includes investigation and interpretation of environmental factors such as seismic conditions.~~

~~This bill would require the commission to convene, or continue, until August 26, 2025, an independent peer review panel to conduct an independent review of enhanced seismic studies and surveys of the Diablo Canyon Units 1 and 2 powerplant, including the surrounding areas of the facility and areas of nuclear waste storage.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 **SECTION 1.** *Section 50003 of the Financial Code is amended*
2 *to read:*

3 50003. (a) “Annual audit” means a certified audit of the
4 licensee’s books, records, and systems of internal control performed
5 by an independent certified public accountant in accordance with
6 generally accepted accounting principles and generally accepted
7 auditing standards.

8 (b) “Borrower” means the loan applicant.

9 (c) “Buy” includes exchange, offer to buy, or solicitation to
10 buy.

11 (d) “Commissioner” means the Commissioner of Business
12 Oversight.

13 (e) “Control” means the possession, directly or indirectly, of
14 the power to direct, or cause the direction of, the management and
15 policies of a licensee under this division, whether through voting
16 or through the ownership of voting power of an entity that
17 possesses voting power of the licensee, or otherwise. Control is
18 presumed to exist if a person, directly or indirectly, owns, controls,
19 or holds 10 percent or more of the voting power of a licensee or
20 of an entity that owns, controls, or holds, with power to vote, 10
21 percent or more of the voting power of a licensee. No person shall
22 be deemed to control a licensee solely by reason of his or her status
23 as an officer or director of the licensee.

24 (f) “Depository institution” has the same meaning as in Section
25 3 of the Federal Deposit Insurance Act, and includes any credit
26 union.

27 (g) “Engage in the business” means the dissemination to the
28 public, or any part of the public, by means of written, printed, or
29 electronic communication or any communication by means of
30 recorded telephone messages or spoken on radio, television, or
31 similar communications media, of any information relating to the
32 making of residential mortgage loans, the servicing of residential
33 mortgage loans, or both. “Engage in the business” also means,
34 without limitation, making residential mortgage loans or servicing
35 residential mortgage loans, or both.

36 (h) “Federal banking agencies” means the Board of Governors
37 of the Federal Reserve System, the Comptroller of the Currency,

1 the National Credit Union Administration, and the Federal Deposit
2 Insurance Corporation.

3 (i) “In this state” includes any activity of a person relating to
4 making or servicing a residential mortgage loan that originates
5 from this state and is directed to persons outside this state, or that
6 originates from outside this state and is directed to persons inside
7 this state, or that originates inside this state and is directed to
8 persons inside this state, or that leads to the formation of a contract
9 and the offer or acceptance thereof is directed to a person in this
10 state (whether from inside or outside this state and whether the
11 offer was made inside or outside the state).

12 (j) “Institutional investor” means the following:

13 (1) The United States or any state, district, territory, or
14 commonwealth thereof, or any city, county, city and county, public
15 district, public authority, public corporation, public entity, or
16 political subdivision of a state, district, territory, or commonwealth
17 of the United States, or any agency or other instrumentality of any
18 one or more of the foregoing, including, by way of example, the
19 Federal National Mortgage Association and the Federal Home
20 Loan Mortgage Corporation.

21 (2) Any bank, trust company, savings bank or savings and loan
22 association, credit union, industrial bank or industrial loan
23 company, personal property broker, consumer finance lender,
24 commercial finance lender, or insurance company, or subsidiary
25 or affiliate of one of the preceding entities, doing business under
26 the authority of or in accordance with a license, certificate, or
27 charter issued by the United States or any state, district, territory,
28 or commonwealth of the United States.

29 (3) Trustees of pension, profit-sharing, or welfare funds, if the
30 pension, profit-sharing, or welfare fund has a net worth of not less
31 than fifteen million dollars (\$15,000,000), except pension,
32 profit-sharing, or welfare funds of a licensee or its affiliate,
33 self-employed individual retirement plans, or individual retirement
34 accounts.

35 (4) A corporation or other entity with outstanding securities
36 registered under Section 12 of the federal Securities Exchange Act
37 of 1934 or a wholly owned subsidiary of that corporation or entity,
38 provided that the purchaser represents either of the following:

1 (A) That it is purchasing for its own account for investment and
2 not with a view to, or for sale in connection with, any distribution
3 of a promissory note.

4 (B) That it is purchasing for resale pursuant to an exemption
5 under Rule 144A (17 C.F.R. 230.144A) of the Securities and
6 Exchange Commission.

7 (5) An investment company registered under the Investment
8 Company Act of 1940; or a wholly owned and controlled subsidiary
9 of that company, provided that the purchaser makes either of the
10 representations provided in paragraph (4).

11 (6) A residential mortgage lender or servicer licensed to make
12 residential mortgage loans under this law or an affiliate or
13 subsidiary of that person.

14 (7) Any person who is licensed as a securities broker or
15 securities dealer under any law of this state, or of the United States,
16 or any employee, officer, or agent of that person, if that person is
17 acting within the scope of authority granted by that license or an
18 affiliate or subsidiary controlled by that broker or dealer, in
19 connection with a transaction involving the offer, sale, purchase,
20 or exchange of one or more promissory notes secured directly or
21 indirectly by liens on real property or a security representing an
22 ownership interest in a pool of promissory notes secured directly
23 or indirectly by liens on real property, and the offer and sale of
24 those securities is qualified under the California Corporate
25 Securities Law of 1968 or registered under federal securities laws,
26 or exempt from qualification or registration.

27 (8) A licensed real estate broker selling the loan to an
28 institutional investor specified in paragraphs (1) to (7), inclusive,
29 or paragraph (9) or (10).

30 (9) A business development company as defined in Section
31 2(a)(48) of the Investment Company Act of 1940 or a small
32 business investment company licensed by the United States Small
33 Business Administration under Section 301(c) or (d) of the Small
34 Business Investment Act of 1958.

35 (10) A syndication or other combination of any of the foregoing
36 entities that is organized to purchase a promissory note.

37 (11) A trust or other business entity established by an
38 institutional investor for the purpose of issuing or facilitating the
39 issuance of securities representing undivided interests in, or rights
40 to receive payments from or to receive payments primarily from,

- 1 a pool of financial assets held by the trust or business entity,
2 provided that all of the following apply:
- 3 (A) The business entity is not a sole proprietorship.
- 4 (B) The pool of assets consists of one or more of the following:
- 5 (i) Interest-bearing obligations.
- 6 (ii) Other contractual obligations representing the right to receive
7 payments from the assets.
- 8 (iii) Surety bonds, insurance policies, letters of credit, or other
9 instruments providing credit enhancement for the assets.
- 10 (C) The securities will be either one of the following:
- 11 (i) Rated as “investment grade” by Standard and Poor’s
12 Corporation or Moody’s Investors Service, Inc. “Investment grade”
13 means that the securities will be rated by Standard and Poor’s
14 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
15 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
16 with “+” or “—” designation or other variations that occur within
17 those ratings.
- 18 (ii) Sold to an institutional investor.
- 19 (D) The offer and sale of the securities is qualified under the
20 California Corporate Securities Law of 1968 or registered under
21 federal securities laws, or exempt from qualification or registration.
- 22 (k) “Institutional lender” means the following:
- 23 (1) The United States or any state, district, territory, or
24 commonwealth thereof, or any city, county, city and county, public
25 district, public authority, public corporation, public entity, or
26 political subdivision of a state, district, territory, or commonwealth
27 of the United States, or any agency or other instrumentality of any
28 one or more of the foregoing, including, by way of example, the
29 Federal National Mortgage Association and the Federal Home
30 Loan Mortgage Corporation.
- 31 (2) Any bank, trust company, savings bank or savings and loan
32 association, credit union, industrial loan company, or insurance
33 company, or service or investment company that is wholly owned
34 and controlled by one of the preceding entities, doing business
35 under the authority of and in accordance with a license, certificate,
36 or charter issued by the United States or any state, district, territory,
37 or commonwealth of the United States.
- 38 (3) Any corporation with outstanding securities registered under
39 Section 12 of the Securities Exchange Act of 1934 or any wholly
40 owned subsidiary of that corporation.

1 (4) A residential mortgage lender or servicer licensed to make
2 residential mortgage loans under this law.

3 (l) “Law” means the California Residential Mortgage Lending
4 Act.

5 (m) “Lender” means a person that ~~(1) is an~~ *satisfies either of*
6 *the following:*

7 (1) *The person is or does all of the following:*

8 (A) *The person is an approved lender for the Federal Housing*
9 *Administration, Veterans Administration, Farmers Home*
10 *Administration, Government National Mortgage Association,*
11 *Federal National Mortgage Association, or Federal Home Loan*
12 *Mortgage Corporation, ~~(2) directly~~ Corporation.*

13 (B) *The person directly makes residential mortgage loans, and*
14 *~~(3) makes loans.~~*

15 (C) *The person makes the credit decision in the loan ~~transactions.~~*
16 *transactions.*

17 (2) *The person is either of the following:*

18 (A) *Is not a natural person and engages in the activities of a*
19 *loan processor or underwriter for a residential mortgage loan.*

20 (B) *Is a natural person and an independent contractor who*
21 *engages in the activities of a loan processor or underwriter for a*
22 *residential mortgage loan as described in subdivision (c) of Section*
23 *50003.6.*

24 (n) “Licensee” means, depending on the context, a person
25 licensed under Chapter 2 (commencing with Section 50120),
26 Chapter 3 (commencing with Section 50130), or Chapter 3.5
27 (commencing with Section 50140).

28 (o) “Makes or making residential mortgage loans” or “mortgage
29 lending” means processing, underwriting, or as a lender using or
30 advancing one’s own funds, or making a commitment to advance
31 one’s own funds, to a loan applicant for a residential mortgage
32 loan.

33 (p) “Mortgage loan,” “residential mortgage loan,” or “home
34 mortgage loan” means a federally related mortgage loan as defined
35 in Section 1024.2 of Title 12 of the Code of Federal Regulations,
36 or a loan made to finance construction of a one-to-four family
37 dwelling.

38 (q) “Mortgage servicer” or “residential mortgage loan servicer”
39 means a person that (1) is an approved servicer for the Federal
40 Housing Administration, Veterans Administration, Farmers Home

1 Administration, Government National Mortgage Association,
2 Federal National Mortgage Association, or Federal Home Loan
3 Mortgage Corporation, and (2) directly services or offers to service
4 mortgage loans.

5 (r) “Nationwide Mortgage Licensing System and Registry”
6 means a mortgage licensing system developed and maintained by
7 the Conference of State Bank Supervisors and the American
8 Association of Residential Mortgage Regulators for the licensing
9 and registration of licensed mortgage loan originators.

10 (s) “Net worth” has the meaning set forth in Section 50201.

11 (t) “Own funds” means (1) cash, corporate capital, or warehouse
12 credit lines at commercial banks, savings banks, savings and loan
13 associations, industrial loan companies, or other sources that are
14 liability items on a lender’s financial statements, whether secured
15 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,
16 or warehouse credit lines at commercial banks or other sources
17 that are liability items on the affiliate’s financial statements,
18 whether secured or unsecured. “Own funds” does not include funds
19 provided by a third party to fund a loan on condition that the third
20 party will subsequently purchase or accept an assignment of that
21 loan.

22 (u) “Person” means a natural person, a sole proprietorship, a
23 corporation, a partnership, a limited liability company, an
24 association, a trust, a joint venture, an unincorporated organization,
25 a joint stock company, a government or a political subdivision of
26 a government, and any other entity.

27 (v) “Residential real property” or “residential real estate” means
28 real property located in this state that is improved by a one-to-four
29 family dwelling.

30 (w) “SAFE Act” means the federal Secure and Fair Enforcement
31 for Mortgage Licensing Act of 2008 (Public Law 110-289).

32 (x) “Service” or “servicing” means receiving more than three
33 installment payments of principal, interest, or other amounts placed
34 in escrow, pursuant to the terms of a mortgage loan and performing
35 services by a licensee relating to that receipt or the enforcement
36 of its receipt, on behalf of the holder of the note evidencing that
37 loan.

38 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

1 (z) “Unique identifier” means a number or other identifier
2 assigned by protocols established by the Nationwide Mortgage
3 Licensing System and Registry.

4 (aa) For purposes of Sections 50142, 50143, and 50145,
5 “nontraditional mortgage product” means any mortgage product
6 other than a 30-year fixed rate mortgage.

7 (ab) For purposes of Section 50141, “expungement” means the
8 subsequent order under the provisions of Section 1203.4 of the
9 Penal Code allowing such individual to withdraw his or her plea
10 of guilty and to enter a plea of not guilty, or setting aside the verdict
11 of guilty or dismissing the accusation, information, or indictment.
12 With respect to criminal convictions in another state, that state’s
13 definition of expungement will apply.

14 *SEC. 2. Section 50201 of the Financial Code is amended to*
15 *read:*

16 50201. (a) A licensee issued a license for purposes of making
17 or servicing residential mortgage loans, including a licensee
18 employing one or more mortgage loan originators, shall
19 continuously maintain a minimum tangible net worth at all times
20 of two hundred fifty thousand dollars (\$250,000). *The*
21 *commissioner, in his or her discretion, may require a lender who*
22 *engages in the activities described in paragraph (2) of subdivision*
23 *(m) of Section 50003 to continuously maintain a minimum tangible*
24 *net worth of an amount that is greater than two hundred fifty*
25 *thousand dollars (\$250,000), but that does not exceed the net worth*
26 *required of an approved lender under the Federal Housing*
27 *Administration.*

28 (b) Tangible net worth shall be computed in accordance with
29 generally accepted accounting principles.

30 (c) The commissioner may promulgate rules or regulations with
31 respect to the requirements for minimum net worth, as are
32 necessary to accomplish the purposes of this division and comply
33 with the SAFE Act.

34 ~~SECTION 1. Section 712 is added to the Public Utilities Code,~~
35 ~~to read:~~

36 ~~712. (a) The commission shall convene, or continue, until~~
37 ~~August 26, 2025, an independent peer review panel to conduct an~~
38 ~~independent review of enhanced seismic studies and surveys of~~
39 ~~the Diablo Canyon Units 1 and 2 powerplant, including the~~
40 ~~surrounding areas of the facility and areas of nuclear waste storage.~~

1 ~~(b) The independent peer review panel shall contract with the~~
 2 ~~Energy Commission, the California Geological Survey of the~~
 3 ~~Department of Conservation, the California Coastal Commission,~~
 4 ~~the Alfred E. Alquist Seismic Safety Commission, the Office of~~
 5 ~~Emergency Services, and the County of San Luis Obispo to~~
 6 ~~participate on the panel and provide expertise.~~

7 ~~(c) The independent peer review panel shall review the seismic~~
 8 ~~studies and hold public meetings.~~

9 ~~(d) The commission shall make reports by the independent peer~~
 10 ~~review panel publicly available on the Internet Web site maintained~~
 11 ~~by the commission.~~

12 ~~SEC. 2. This act is an urgency statute necessary for the~~
 13 ~~immediate preservation of the public peace, health, or safety within~~
 14 ~~the meaning of Article IV of the Constitution and shall go into~~
 15 ~~immediate effect. The facts constituting the necessity are:~~

16 ~~The Public Utilities Commission in Decision 10-08-003 (August~~
 17 ~~12, 2010) convened an independent peer review panel to review~~
 18 ~~the seismic studies conducted on behalf of Pacific Gas and Electric~~
 19 ~~Company relative to the Diablo Canyon Units 1 and 2 powerplant.~~
 20 ~~The independent peer review panel, in addition to providing~~
 21 ~~valuable expertise to the commission in evaluating the seismic~~
 22 ~~studies, also operates to assure the public that the seismic studies~~
 23 ~~are being performed in an appropriate manner. Because the~~
 24 ~~commission's current contracts for the independent peer review~~
 25 ~~panel are set to expire on November 30, 2015, the Diablo Canyon~~
 26 ~~Units 1 and 2 powerplant is authorized to operate until August 26,~~
 27 ~~2025, by the federal Nuclear Regulatory Commission, and there~~
 28 ~~continues to be enhanced seismic studies and surveys conducted~~
 29 ~~that warrant review by the independent peer review panel to ensure~~
 30 ~~the safety of the public, it is necessary that this act take effect~~
 31 ~~immediately.~~