

AMENDED IN SENATE MARCH 9, 2009

SENATE BILL

No. 94

Introduced by Senator Calderon

January 22, 2009

An act to amend Sections 10085.5 and 10177 of, and to add Section 10147.6 to, the Business and Professions Code, to amend Section 2945.1 of, and to add Sections 2944.6 and 2944.7 to, the Civil Code, and to amend Sections 22161 and 22301 of, and to add ~~Section~~ *Sections 1243, 14962, and 50002.5* to, the Financial Code, relating to mortgage loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 94, as amended, Calderon. Mortgage loans.

(1) The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner. The California Finance Lenders Law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. The California Residential Mortgage Lending Act provides for the regulation and licensure of residential mortgage lenders and servicers by the Commissioner of Corporations. *The Banking Law provides for the regulation of state commercial banks by the Commissioner of Financial Institutions. The California Credit Union Law provides for the regulation of state credit unions by the Commissioner of Financial Institutions.* A willful violation of ~~any provision~~ *specified provisions* of those acts is a crime.

This bill would prohibit ~~real estate licensees~~ *any person* from charging, contracting for, or receiving an advance fee, ~~and as defined, for performing services for borrowers in connection with the modification of the terms of a loan secured directly or collaterally by a lien on single-family residential real property, unless the person is a licensed~~

real estate broker and has complied with the Real Estate Law, except as specified. The bill would also prohibit finance lenders and brokers and, residential mortgage lenders and servicers, and state-chartered commercial banks and credit unions from charging, contracting for, or receiving any interest or charge; for performing services for borrowers in connection with the modification of the terms of, or the negotiation of another form of forbearance or forgiveness in connection with, a loan secured directly or collaterally by a lien on single-family residential real property, except as specified. The bill property.

This bill would also require any person who, for compensation, solicits customers for, or offers to perform, mortgage loan modifications or other forms of mortgage loan forbearance to provide a specified 10-point 14-point bold type statement regarding loan modification fees, and would prohibit those persons from demanding or receiving any preperformance compensation, as specified, or requiring any security as collateral for final compensation, or taking a power of attorney from a borrower. The bill would also provide that a real estate licensee who fails to comply with specified provisions related to mortgages, including the loan modification provisions, would be subject to disciplinary action by the Real Estate Commissioner. The bill would add to the California Finance Lenders Law a prohibition on making any false, deceptive, or misleading statement or, representation, or omission in connection with a loan the course of a licensee's lending or brokering activities.

Because a violation of these provisions by certain licensees may be punished as crimes under their respective licensing laws, this bill would impose a state-mandated local program.

(2) Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, and imposes regulations upon foreclosure consultants when servicing a foreclosure sale, as specified. Existing law excludes specified persons from the definition of a foreclosure consultant, including a person licensed under the Real Estate Law when making a direct loan or engaging in specified acts, and a person licensed to make loans as a finance lender, subject to the authority of the Commissioner of Corporations to terminate this exclusion, as specified.

This bill would instead specify that a real estate licensee and a finance lender are excluded from the definition of a foreclosure consultant when acting under the authority of that person's license, and would delete the commissioner's authority to terminate the finance lender's exclusion.

The bill would also delete obsolete statutory references from those provisions.

(3) 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 10085.5 of the Business and Professions
2 Code is amended to read:

3 10085.5. (a) It shall be unlawful for any person to claim,
4 demand, charge, receive, collect, or contract for an advance fee
5 (1) for soliciting lenders on behalf of borrowers or performing
6 services for borrowers in connection with loans to be secured
7 directly or collaterally by a lien on real property, before the
8 borrower becomes obligated to complete the loan, (2) for
9 performing services for borrowers in connection with the
10 modification of the terms of a loan secured directly or collaterally
11 by a lien on single-family residential real property, or (3) for
12 performing any other activities for which a license is required,
13 unless the person is a licensed real estate broker and has complied
14 with the provisions of this part.

15 (b) This section does not prohibit the acceptance or receipt of
16 an advance fee by any bank, savings association, credit union,
17 industrial loan company, or person acting within the scope of a
18 license issued to that person pursuant to Division 9 (commencing
19 with Section 22000) of the Financial Code, in connection with
20 loans to be secured directly or collaterally by a lien on real
21 property. This section does not apply to charges made by title
22 insurers and controlled escrow companies pursuant to Chapter 1
23 (commencing with Section 12340) of Part 6 of Division 2 of the
24 Insurance Code.

25 (c) A violation of this section is a public offense punishable by
26 a fine not exceeding ten thousand dollars (\$10,000), by
27 imprisonment in the county jail for a term not to exceed six months,
28 or by both that fine and imprisonment, or if by a corporation, the

1 violation is punishable by a fine not exceeding fifty thousand
2 dollars (\$50,000).

3 SEC. 2. Section 10147.6 is added to the Business and
4 Professions Code, to read:

5 10147.6. (a) Any licensee who solicits customers for the
6 purpose of helping negotiate a mortgage loan modification or other
7 form of mortgage loan forbearance for a fee or other form of
8 compensation, or who otherwise offers to perform these services
9 for a borrower for a fee or other form of compensation, shall
10 provide the following ~~statement in not less than 10-point bold type~~
11 *to the borrower to the borrower, as a separate statement, in not*
12 *less than 14-point bold type*, prior to entering into any fee
13 agreement with the borrower:
14

15 IT IS NOT NECESSARY TO PAY A THIRD PARTY TO
16 ARRANGE FOR A LOAN MODIFICATION OR OTHER FORM
17 OF FORBEARANCE FROM YOUR MORTGAGE LENDER
18 OR SERVICER. *YOU MAY CALL YOUR LENDER DIRECTLY*
19 *TO ASK FOR A CHANGE IN YOUR LOAN TERMS.* NONPROFIT
20 HOUSING COUNSELING AGENCIES ALSO OFFER THESE
21 AND OTHER FORMS OF BORROWER ASSISTANCE FREE
22 OF CHARGE. A LIST OF NONPROFIT HOUSING
23 COUNSELING AGENCIES APPROVED BY THE UNITED
24 STATES DEPARTMENT OF HOUSING AND URBAN
25 DEVELOPMENT (HUD) IS AVAILABLE FROM YOUR
26 LOCAL HUD OFFICE OR BY VISITING WWW.HUD.GOV.
27

28 (b) *If loan modification or other mortgage loan forbearance*
29 *services are offered or negotiated in one of the foreign languages*
30 *set forth in Section 1632 of the Civil Code, a translated copy of*
31 *the statement in subdivision (a) shall be provided to the borrower*
32 *in that foreign language.*

33 SEC. 3. Section 10177 of the Business and Professions Code
34 is amended to read:

35 10177. The commissioner may suspend or revoke the license
36 of a real estate licensee, or may deny the issuance of a license to
37 an applicant, who has done any of the following, or may suspend
38 or revoke the license of a corporation, or deny the issuance of a
39 license to a corporation, if an officer, director, or person owning

1 or controlling 10 percent or more of the corporation's stock has
2 done any of the following:

3 (a) Procured, or attempted to procure, a real estate license or
4 license renewal, for himself or herself or a salesperson, by fraud,
5 misrepresentation, or deceit, or by making a material misstatement
6 of fact in an application for a real estate license, license renewal,
7 or reinstatement.

8 (b) Entered a plea of guilty or nolo contendere to, or been found
9 guilty of, or been convicted of, a felony, or a crime substantially
10 related to the qualifications, functions, or duties of a real estate
11 licensee, and the time for appeal has elapsed or the judgment of
12 conviction has been affirmed on appeal, irrespective of an order
13 granting probation following that conviction, suspending the
14 imposition of sentence, or of a subsequent order under Section
15 1203.4 of the Penal Code allowing that licensee to withdraw his
16 or her plea of guilty and to enter a plea of not guilty, or dismissing
17 the accusation or information.

18 (c) Knowingly authorized, directed, connived at, or aided in the
19 publication, advertisement, distribution, or circulation of a material
20 false statement or representation concerning his or her designation
21 or certification of special education, credential, trade organization
22 membership, or business, or concerning a business opportunity or
23 a land or subdivision, as defined in Chapter 1 (commencing with
24 Section 11000) of Part 2, offered for sale.

25 (d) Willfully disregarded or violated the Real Estate Law (Part
26 1 (commencing with Section 10000)) or Chapter 1 (commencing
27 with Section 11000) of Part 2 or the rules and regulations of the
28 commissioner for the administration and enforcement of the Real
29 Estate Law and Chapter 1 (commencing with Section 11000) of
30 Part 2.

31 (e) Willfully used the term "realtor" or a trade name or insignia
32 of membership in a real estate organization of which the licensee
33 is not a member.

34 (f) Acted or conducted himself or herself in a manner that would
35 have warranted the denial of his or her application for a real estate
36 license, or has either had a license denied or had a license issued
37 by another agency of this state, another state, or the federal
38 government revoked or suspended for acts that, if done by a real
39 estate licensee, would be grounds for the suspension or revocation
40 of a California real estate license, if the action of denial, revocation,

1 or suspension by the other agency or entity was taken only after
2 giving the licensee or applicant fair notice of the charges, an
3 opportunity for a hearing, and other due process protections
4 comparable to the Administrative Procedure Act (Chapter 3.5
5 (commencing with Section 11340), Chapter 4 (commencing with
6 Section 11370), and Chapter 5 (commencing with Section 11500)
7 of Part 1 of Division 3 of Title 2 of the Government Code), and
8 only upon an express finding of a violation of law by the agency
9 or entity.

10 (g) Demonstrated negligence or incompetence in performing
11 an act for which he or she is required to hold a license.

12 (h) As a broker licensee, failed to exercise reasonable
13 supervision over the activities of his or her salespersons, or, as the
14 officer designated by a corporate broker licensee, failed to exercise
15 reasonable supervision and control of the activities of the
16 corporation for which a real estate license is required.

17 (i) Has used his or her employment by a governmental agency
18 in a capacity giving access to records, other than public records,
19 in a manner that violates the confidential nature of the records.

20 (j) Engaged in any other conduct, whether of the same or a
21 different character than specified in this section, which constitutes
22 fraud or dishonest dealing.

23 (k) Violated any of the terms, conditions, restrictions, and
24 limitations contained in an order granting a restricted license.

25 (l) (1) Solicited or induced the sale, lease, or listing for sale or
26 lease of residential property on the ground, wholly or in part, of
27 loss of value, increase in crime, or decline of the quality of the
28 schools due to the present or prospective entry into the
29 neighborhood of a person or persons having a characteristic listed
30 in subdivision (a) or (d) of Section 12955 of the Government Code,
31 as those characteristics are defined in Sections 12926, *and* 12926.1,
32 subdivision (m); and paragraph (1) of subdivision (p) of Section
33 12955, and Section 12955.2 of the Government Code.

34 (2) Notwithstanding paragraph (1), with respect to familial
35 status, paragraph (1) shall not be construed to apply to housing for
36 older persons, as defined in Section 12955.9 of the Government
37 Code. With respect to familial status, nothing in paragraph (1)
38 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
39 and 799.5 of the Civil Code, relating to housing for senior citizens.
40 Subdivision (d) of Section 51 and Section 1360 of the Civil Code

1 and subdivisions (n), (o), and (p) of Section 12955 of the
2 Government Code shall apply to paragraph (1).

3 (m) Violated the Franchise Investment Law (Division 5
4 (commencing with Section 31000) of Title 4 of the Corporations
5 Code) or regulations of the Commissioner of Corporations
6 pertaining thereto.

7 (n) Violated the Corporate Securities Law of 1968 (Division 1
8 (commencing with Section 25000) of Title 4 of the Corporations
9 Code) or the regulations of the Commissioner of Corporations
10 pertaining thereto.

11 (o) Failed to disclose to the buyer of real property, in a
12 transaction in which the licensee is an agent for the buyer, the
13 nature and extent of a licensee's direct or indirect ownership
14 interest in that real property. The direct or indirect ownership
15 interest in the property by a person related to the licensee by blood
16 or marriage, by an entity in which the licensee has an ownership
17 interest, or by any other person with whom the licensee has a
18 special relationship shall be disclosed to the buyer.

19 (p) Violated Article 6 (commencing with Section 10237).

20 (q) Violated or failed to comply with Chapter 2 (commencing
21 with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil
22 Code, related to mortgages.

23 If a real estate broker that is a corporation has not done any of
24 the foregoing acts, either directly or through its employees, agents,
25 officers, directors, or persons owning or controlling 10 percent or
26 more of the corporation's stock, the commissioner may not deny
27 the issuance of a real estate license to, or suspend or revoke the
28 real estate license of, the corporation, provided that any offending
29 officer, director, or stockholder, who has done any of the foregoing
30 acts individually and not on behalf of the corporation, has been
31 completely disassociated from any affiliation or ownership in the
32 corporation.

33 SEC. 4. Section 2944.6 is added to the Civil Code, to read:

34 2944.6. (a) Notwithstanding any other provision of law, any
35 person who solicits customers for the purpose of helping negotiate
36 a mortgage loan modification or other form of mortgage loan
37 forbearance for a fee or other compensation, or who otherwise
38 offers to perform these services for a borrower for a fee or other
39 compensation, shall provide the following ~~statement in not less~~
40 ~~than 10-point bold type to the borrower~~ *to the borrower, as a*

1 *separate statement, in not less than 14-point bold type, prior to*
2 *entering into any fee agreement with the borrower:*

3
4 IT IS NOT NECESSARY TO PAY A THIRD PARTY TO
5 ARRANGE FOR A LOAN MODIFICATION OR OTHER FORM
6 OF FORBEARANCE FROM YOUR MORTGAGE LENDER
7 OR SERVICER. *YOU MAY CALL YOUR LENDER DIRECTLY*
8 *TO ASK FOR A CHANGE IN YOUR LOAN TERMS.* NONPROFIT
9 HOUSING COUNSELING AGENCIES ALSO OFFER THESE
10 AND OTHER FORMS OF BORROWER ASSISTANCE FREE
11 OF CHARGE. A LIST OF NONPROFIT HOUSING
12 COUNSELING AGENCIES APPROVED BY THE UNITED
13 STATES DEPARTMENT OF HOUSING AND URBAN
14 DEVELOPMENT (HUD) IS AVAILABLE FROM YOUR
15 LOCAL HUD OFFICE OR BY VISITING WWW.HUD.GOV.

16
17 *(b) If loan modification or other mortgage loan forbearance*
18 *services are offered or negotiated in one of the foreign languages*
19 *set forth in Section 1632, a translated copy of the statement in*
20 *subdivision (a) shall be provided to the borrower in that foreign*
21 *language.*

22 SEC. 5. Section 2944.7 is added to the Civil Code, to read:

23 2944.7. Notwithstanding any other provision of law, it shall
24 be unlawful for any person who solicits customers for the purpose
25 of helping negotiate a mortgage loan modification or other form
26 of mortgage loan forbearance for a fee or other compensation, or
27 who otherwise offers to perform these services for a borrower for
28 a fee or other compensation, to do ~~either~~ any of the following:

29 (a) Claim, demand, charge, collect, or receive any compensation
30 until after the person has fully performed each and every service
31 the person contracted to perform or represented that he or she
32 would perform.

33 (b) Take any wage assignment, any lien of any type on real or
34 personal property, or other security to secure the payment of
35 compensation.

36 *(c) Take any power of attorney from the borrower for any*
37 *purpose.*

38 SEC. 6. Section 2945.1 of the Civil Code is amended to read:

39 2945.1. The following definitions apply to this chapter:

1 (a) “Foreclosure consultant” means any person who makes any
2 solicitation, representation, or offer to any owner to perform for
3 compensation or who, for compensation, performs any service
4 which the person in any manner represents will in any manner do
5 any of the following:

6 (1) Stop or postpone the foreclosure sale.

7 (2) Obtain any forbearance from any beneficiary or mortgagee.

8 (3) Assist the owner to exercise the right of reinstatement
9 provided in Section 2924c.

10 (4) Obtain any extension of the period within which the owner
11 may reinstate his or her obligation.

12 (5) Obtain any waiver of an acceleration clause contained in
13 any promissory note or contract secured by a deed of trust or
14 mortgage on a residence in foreclosure or contained that deed of
15 trust or mortgage.

16 (6) Assist the owner to obtain a loan or advance of funds.

17 (7) Avoid or ameliorate the impairment of the owner’s credit
18 resulting from the recording of a notice of default or the conduct
19 of a foreclosure sale.

20 (8) Save the owner’s residence from foreclosure.

21 (9) Assist the owner in obtaining from the beneficiary,
22 mortgagee, trustee under a power of sale, or counsel for the
23 beneficiary, mortgagee, or trustee, the remaining proceeds from
24 the foreclosure sale of the owner’s residence.

25 (b) A foreclosure consultant does not include any of the
26 following:

27 (1) A person licensed to practice law in this state when the
28 person renders service in the course of his or her practice as an
29 attorney at law.

30 (2) A person licensed under Division 3 (commencing with
31 Section 12000) of the Financial Code when the person is acting
32 as a prorater as defined therein.

33 (3) A person licensed under Part 1 (commencing with Section
34 10000) of Division 4 of the Business and Professions Code when
35 the person is acting under the authority of that license, *as described*
36 *in Section 10131 or 10131.1 of the Business and Professions Code.*

37 (4) A person licensed under Chapter 1 (commencing with
38 Section 5000) of Division 3 of the Business and Professions Code
39 when the person is acting in any capacity for which the person is
40 licensed under those provisions.

1 (5) A person or his or her authorized agent acting under the
2 express authority or written approval of the Department of Housing
3 and Urban Development or other department or agency of the
4 United States or this state to provide services.

5 (6) A person who holds or is owed an obligation secured by a
6 lien on any residence in foreclosure when the person performs
7 services in connection with this obligation or lien.

8 (7) Any person licensed to make loans pursuant to Division 9
9 (commencing with Section 22000) of the Financial Code when
10 the person is acting under the authority of that license.

11 (8) Any person or entity doing business under any law of this
12 state, or of the United States relating to banks, trust companies,
13 savings and loan associations, industrial loan companies, pension
14 trusts, credit unions, insurance companies, or any person or entity
15 authorized under the laws of this state to conduct a title or escrow
16 business, or a mortgagee which is a United States Department of
17 Housing and Urban Development approved mortgagee and any
18 subsidiary or affiliate of the above, and any agent or employee of
19 the above while engaged in the business of these persons or entities.

20 (9) A person licensed as a residential mortgage lender or servicer
21 pursuant to Division 20 (commencing with Section 50000) of the
22 Financial Code, when acting under the authority of that license.

23 (c) Notwithstanding subdivision (b), any person who provides
24 services pursuant to paragraph (9) of subdivision (a) is a foreclosure
25 consultant unless he or she is the owner's attorney.

26 (d) "Person" means any individual, partnership, corporation,
27 limited liability company, association or other group, however
28 organized.

29 (e) "Service" means and includes, but is not limited to, any of
30 the following:

31 (1) Debt, budget, or financial counseling of any type.

32 (2) Receiving money for the purpose of distributing it to
33 creditors in payment or partial payment of any obligation secured
34 by a lien on a residence in foreclosure.

35 (3) Contacting creditors on behalf of an owner of a residence
36 in foreclosure.

37 (4) Arranging or attempting to arrange for an extension of the
38 period within which the owner of a residence in foreclosure may
39 cure his or her default and reinstate his or her obligation pursuant
40 to Section 2924c.

1 (5) Arranging or attempting to arrange for any delay or
2 postponement of the time of sale of the residence in foreclosure.

3 (6) Advising the filing of any document or assisting in any
4 manner in the preparation of any document for filing with any
5 bankruptcy court.

6 (7) Giving any advice, explanation or instruction to an owner
7 of a residence in foreclosure which in any manner relates to the
8 cure of a default in or the reinstatement of an obligation secured
9 by a lien on the residence in foreclosure, the full satisfaction of
10 that obligation, or the postponement or avoidance of a sale of a
11 residence in foreclosure pursuant to a power of sale contained in
12 any deed of trust.

13 (8) Arranging or attempting to arrange for the payment by the
14 beneficiary, mortgagee, trustee under a power of sale, or counsel
15 for the beneficiary, mortgagee, or trustee, of the remaining proceeds
16 to which the owner is entitled from a foreclosure sale of the
17 owner's residence in foreclosure. Arranging or attempting to
18 arrange for the payment shall include any arrangement where the
19 owner transfers or assigns the right to the remaining proceeds of
20 a foreclosure sale to the foreclosure consultant or any person
21 designated by the foreclosure consultant, whether that transfer is
22 effected by agreement, assignment, deed, power of attorney, or
23 assignment of claim.

24 (f) "Residence in foreclosure" means a residence in foreclosure
25 as defined in Section 1695.1.

26 (g) "Owner" means a property owner as defined in Section
27 1695.1.

28 (h) "Contract" means any agreement, or any term thereof,
29 between a foreclosure consultant and an owner for the rendition
30 of any service as defined in subdivision (e).

31 *SEC. 7. Section 1243 is added to the Financial Code, to read:*

32 *1243. (a) No bank shall directly or indirectly charge, contract*
33 *for, or receive any interest or charge of any nature for performing*
34 *services for a borrower in connection with either of the following:*

35 *(1) The actual or attempted modification of the terms of a loan*
36 *secured directly or collaterally by a lien on single-family*
37 *residential real property.*

38 *(2) The actual or attempted negotiation of another form of*
39 *forbearance or forgiveness in connection with a loan secured*

1 *directly or collaterally by a lien on single-family residential real*
2 *property.*

3 *(b) Nothing in this section precludes a bank from doing either*
4 *of the following:*

5 *(1) Collecting interest or other charges pursuant to the terms*
6 *of a loan that has been modified.*

7 *(2) Accepting payment from a federal agency in connection with*
8 *the federal Homeowner Affordability and Stability Plan or other*
9 *federal plan intended to help reduce foreclosures.*

10 SEC. 8. Section 14962 is added to the Financial Code, to read:

11 14962. (a) No credit union shall directly or indirectly charge,
12 contract for, or receive any interest or charge of any nature for
13 performing services for a borrower in connection with either of
14 the following:

15 (1) The actual or attempted modification of the terms of a loan
16 secured directly or collaterally by a lien on single-family
17 residential real property.

18 (2) The actual or attempted negotiation of another form of
19 forbearance or forgiveness in connection with a loan secured
20 directly or collaterally by a lien on single-family residential real
21 property.

22 (b) Nothing in this section precludes a credit union from doing
23 either of the following:

24 (1) Collecting interest or other charges pursuant to the terms
25 of a loan that has been modified.

26 (2) Accepting payment from a federal agency in connection with
27 the federal Homeowner Affordability and Stability Plan or other
28 federal plan intended to help reduce foreclosures.

29 SEC. 7.

30 SEC. 9. Section 22161 of the Financial Code is amended to
31 read:

32 22161. (a) No person shall make a false, deceptive, or
33 misleading statement or representation in connection with a loan,
34 representation, or omission in the course of his or her lending or
35 brokering activities.

36 (b) No person shall advertise, print, display, publish, distribute,
37 or broadcast, or cause or permit to be advertised, printed, displayed,
38 published, distributed, or broadcast in any manner, any statement
39 or representation with regard to the business subject to the
40 provisions of this division, including the rates, terms, or conditions

1 for making or negotiating loans, that is false, misleading, or
2 deceptive, or that omits material information that is necessary to
3 make the statements not false, misleading, or deceptive, or in the
4 case of a licensee, that refers to the supervision of the business by
5 the state or any department or official of the state.

6 ~~SEC. 8.~~

7 *SEC. 10.* Section 22301 of the Financial Code is amended to
8 read:

9 22301. (a) No licensee shall directly or indirectly charge,
10 contract for, or receive any interest or charge of any nature with
11 respect to a loan of five thousand dollars (\$5,000) or more unless
12 the loan is made.

13 (b) Notwithstanding subdivision (a), whenever a loan of five
14 thousand dollars (\$5,000) or more is not consummated because of
15 the borrower's failure to disclose outstanding liens or other
16 information essential to making the loan or solely because of the
17 borrower's failure to complete the loan in accordance with the
18 loan application, a licensee may charge, contract for, and receive
19 an amount equal to the actual expenses incurred by the licensee
20 in connection with the preparation for the loan.

21 (c) No licensee shall directly or indirectly charge, contract for,
22 or receive any interest or charge of any nature for performing
23 services for a borrower in connection with ~~the~~ *either of the*
24 *following:*

25 (1) *The actual or attempted* modification of the terms of a loan
26 secured directly or collaterally by a lien on single-family residential
27 real property. ~~Nothing~~

28 (2) *The actual or attempted negotiation of another form of*
29 *forbearance or forgiveness in connection with a loan secured*
30 *directly or collaterally by a lien on single-family residential real*
31 *property.*

32 (d) ~~Nothing~~ in this section precludes a licensee from ~~collecting~~
33 *doing either of the following:*

34 (1) *Collecting* interest or other charges pursuant to the terms of
35 a loan that has been modified.

36 (2) *Accepting payment from a federal agency in connection with*
37 *the federal Homeowner Affordability and Stability Plan or other*
38 *federal plan intended to help reduce foreclosures.*

1 ~~SEC. 9.~~

2 ~~SEC. 11.~~ Section 50002.5 is added to the Financial Code, to
3 read:

4 50002.5. (a) No licensee shall directly or indirectly charge,
5 contract for, or receive any interest or charge of any nature for
6 performing services for a borrower in connection with ~~the~~ *either*
7 *of the following:*

8 (1) *The actual or attempted modification of the terms of a loan*
9 *secured directly or collaterally by a lien on single-family residential*
10 *real property.* ~~Nothing~~

11 (2) *The actual or attempted negotiation of another form of*
12 *forbearance or forgiveness in connection with a loan secured*
13 *directly or collaterally by a lien on single-family residential real*
14 *property.*

15 (b) *Nothing* in this section precludes a licensee from ~~collecting~~
16 *doing either of the following:*

17 (1) *Collecting* interest or other charges pursuant to the terms of
18 a loan that has been modified.

19 (2) *Accepting payment from a federal agency in connection with*
20 *the federal Homeowner Affordability and Stability Plan or other*
21 *federal plan intended to help reduce foreclosures.*

22 ~~SEC. 10.~~

23 ~~SEC. 12.~~ No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.