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AMENDED IN ASSEMBLY JULY 15, 2009
AMENDED IN ASSEMBLY JUNE 11, 2009
AMENDED IN SENATE APRIL 28, 2009
AMENDED IN SENATE APRIL 13, 2009
AMENDED IN SENATE MARCH 23, 2009
AMENDED IN SENATE MARCH 9, 2009

SENATE BILL

No. 94

Introduced by Senators Calderon, Corbett, and Steinberg
(Principal coauthor: Senator Correa)
(Coauthor: Senator Florez)
(Coauthor: Assembly Member Lieu)

January 22, 2009

An act to amend Sections 10026, 10085, 10133.1, and 10177 of, to add Section 10147.6 to, and to add and repeal Sections 6106.3 and 10085.6 of, the Business and Professions Code, to amend Section 2945.1 of, to add Section 2944.6 to, and to add and repeal Section 2944.7 of, the Civil Code, and to amend Section 22161 of the Financial Code, relating to mortgage loans, and declaring the urgency thereof, to take effect immediately.

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 specified provisions of those acts is a crime.

This bill would, until January 1, 2013, prohibit any person, including a real estate licensee, who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications or other forms of mortgage loan forbearance, as specified, for a fee or other compensation paid by a borrower, from demanding or receiving any preperformance compensation, as specified, requiring any security as collateral for final compensation, or taking a power of attorney from a borrower, and would make a violation of that prohibition a misdemeanor or subject to specified fines. By creating a new crime, the bill would impose a state-mandated local program.

This bill would also require any person, including a real estate licensee, who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications or other forms of mortgage loan forbearance, as specified, for a fee or other compensation paid by a borrower, to provide a specified 14-point bold type statement regarding loan modification fees. The bill would make a violation of that prohibition a misdemeanor or subject to specified fines, thereby creating a new crime and imposing a state-mandated local program. 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, and would provide that a violation of the above by an attorney may also subject him or her to disciplinary action. The bill would add to the California Finance Lenders Law a prohibition on making a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering a loan.

Because a willful 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.

The bill would also provide that these provisions do not apply to actions taken by a person who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, including, but not limited to, collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule.

(2) The Real Estate Law provides for the regulation and licensure of real estate brokers and salespersons by the Real Estate Commissioner. ~~Existing~~ *As used in the Real Estate Law, the term “advance fee” is defined as a fee that is claimed, demanded, charged, received, collected, or contracted from a principal for a listing, advertisement, or offer to sell or lease property, and as specified.*

This bill would redefine the term “advance fee” to mean a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed, as specified.

Existing law authorizes the commissioner to require that materials used in obtaining advance fee agreements, *as defined*, be submitted to him or her at least 10 calendar days before the materials are used and makes it a misdemeanor, punishable by a fine not exceeding \$1,000, or imprisonment in the county jail not exceeding 6 months, or both, to use any agreement that the commissioner has ordered not to be used.

This bill would increase the maximum fine for using any advance fee agreement that the commissioner has ordered not to be used from \$1,000 to \$2,500.

(3) Existing law provides that certain persons are exempt from regulation under certain provisions of the Real Estate Law dealing with real estate loans.

This bill would further exempt from those provisions specified organizations that have been approved by the United States Department of Housing and Urban Development to provide counseling services, when those services are provided at no cost and in connection with residential mortgage loan modifications.

(4) 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.

(5) 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.

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

Vote: $\frac{2}{3}$. 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 6106.3 is added to the Business and
2 Professions Code, to read:

3 6106.3. (a) It shall constitute cause for the imposition of
4 discipline of an attorney within the meaning of this chapter for an
5 attorney to engage in any conduct in violation of Section 2944.6
6 or 2944.7 of the Civil Code.

7 (b) This section shall remain in effect only until January 1, 2013,
8 and as of that date is repealed, unless a later enacted statute, that
9 is enacted before January 1, 2013, deletes or extends that date.

10 SEC. 2. Section 6106.3 is added to the Business and Professions
11 Code, to read:

12 6106.3. (a) It shall constitute cause for the imposition of
13 discipline of an attorney within the meaning of this chapter for an
14 attorney to engage in any conduct in violation of Section 2944.6
15 of the Civil Code.

16 (b) This section shall become operative on January 1, 2013.

17 SEC. 3. Section 10026 of the Business and Professions Code
18 is amended to read:

10026. The term “advance fee” as used in this part is a fee, regardless of the form, claimed, demanded, charged, received, or collected or contracted by a licensee from a principal before fully completing each and every service the licensee contracted to perform, or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this section. The term applies to a fee for a listing, advertisement or offer to sell or lease property, other than in a newspaper of general circulation, issued primarily for the purpose of promoting the sale or lease of business opportunities or real estate or for referral to real estate brokers or salesmen, or soliciting borrowers or lenders for, or to negotiate loans on, business opportunities or real estate. As used in this section, “advance fee” does not include “security” as that term is used in Section 1950.5 of the Civil Code, or a “screening fee” as that term is used in Section 1950.6 of the Civil Code. This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections.

~~SEC. 3.~~

SEC. 4. Section 10085 of the Business and Professions Code is amended to read:

10085. The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication.

1 The commissioner may determine the form of the advance fee
2 agreements, and all material used in soliciting prospective owners
3 and sellers shall be used in the form and manner which he or she
4 determines is necessary to carry out the purposes and intent of this
5 part.

6 Any violation of any of the provisions of this part or of the rules,
7 regulations, orders or requirements of the commissioner thereunder
8 shall constitute grounds for disciplinary action against a licensee,
9 or for proceedings under Section 10081 of this code, or both. These
10 sanctions are in addition to the criminal proceedings hereinbefore
11 provided.

12 ~~SEC. 4.~~

13 SEC. 5. Section 10085.6 is added to the Business and
14 Professions Code, to read:

15 10085.6. (a) Notwithstanding any other provision of law, it
16 shall be unlawful for any licensee who negotiates, attempts to
17 negotiate, arranges, attempts to arrange, or otherwise offers to
18 perform a mortgage loan modification or other form of mortgage
19 loan forbearance for a fee or other compensation paid by the
20 borrower, to do any of the following:

21 (1) Claim, demand, charge, collect, or receive any compensation
22 until after the licensee has fully performed each and every service
23 the licensee contracted to perform or represented that he, she, or
24 it would perform.

25 (2) Take any wage assignment, any lien of any type on real or
26 personal property, or other security to secure the payment of
27 compensation.

28 (3) Take any power of attorney from the borrower for any
29 purpose.

30 (b) A violation of this section by a natural person who is a
31 licensee is a public offense punishable by a fine not exceeding ten
32 thousand dollars (\$10,000), by imprisonment in the county jail for
33 a term not to exceed one year, or by both that fine and
34 imprisonment, or if by a corporation, the violation is punishable
35 by a fine not exceeding fifty thousand dollars (\$50,000). These
36 penalties are cumulative to any other remedies or penalties
37 provided by law.

38 (c) This section shall apply only to mortgages and deeds of trust
39 secured by residential real property containing four or fewer
40 dwelling units.

(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SEC. 5.~~

SEC. 6. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

1 (7) Any cemetery authority as defined by Section 7018 of the
2 Health and Safety Code, that is authorized to do business in this
3 state or its authorized agent.

4 (8) Any person authorized in writing by a savings institution to
5 act as an agent of that institution, as authorized by Section 6520
6 of the Financial Code or comparable authority of the Office of
7 Thrift Supervision of the United States Department of the Treasury
8 by its regulations, when acting under the authority of that written
9 authorization.

10 (9) Any person who is licensed as a securities broker or
11 securities dealer under any law of this state, or of the United States,
12 or any employee, officer, or agent of that person, if that person,
13 employee, officer, or agent is acting within the scope of authority
14 granted by that license in connection with a transaction involving
15 the offer, sale, purchase, or exchange of a security representing an
16 ownership interest in a pool of promissory notes secured directly
17 or indirectly by liens on real property, which transaction is subject
18 to any law of this state or the United States regulating the offer or
19 sale of securities.

20 (10) Any person licensed as a residential mortgage lender or
21 servicer when acting under the authority of that license.

22 (11) Any organization that has been approved by the United
23 States Department of Housing and Urban Development pursuant
24 to Section 106(a)(1)(iii) of the federal Housing and Urban
25 Development Act of 1968 (~~12 USC~~ *U.S.C. Sec. 1701x*), to provide
26 counseling services, or an employee of such an organization, when
27 those services are provided at no cost to the borrower and are in
28 connection with the modification of the terms of a loan secured
29 directly or collaterally by a lien on residential real property
30 containing four or fewer dwelling units.

31 (b) Persons described in paragraph (1), (2), or (3), as follows,
32 are exempt from the provisions of subdivisions (d) and (e) of
33 Section 10131 or Section 10131.1 with respect to the collection
34 of payments or performance of services for lenders or on notes of
35 owners in connection with loans secured directly or collaterally
36 by liens on real property:

37 (1) The person makes collections on 10 or less of those loans,
38 or in amounts of forty thousand dollars (\$40,000) or less, in any
39 calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

(c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.

(2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.

This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.

~~SEC. 6:~~

SEC. 7. Section 10147.6 is added to the Business and Professions Code, to read:

10147.6. (a) Any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other form of compensation paid by the borrower, shall provide the following 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 arrange for a loan
5 modification or other form of forbearance from your mortgage
6 lender or servicer. You may call your lender directly to ask for a
7 change in your loan terms. Nonprofit housing counseling agencies
8 also offer these and other forms of borrower assistance free of
9 charge. A list of nonprofit housing counseling agencies approved
10 by the United States Department of Housing and Urban
11 Development (HUD) is available from your local HUD office or
12 by visiting www.hud.gov.

13
14 (b) If loan modification or other mortgage loan forbearance
15 services are offered or negotiated in one of the languages set forth
16 in Section 1632 of the Civil Code, a translated copy of the
17 statement in subdivision (a) shall be provided to the borrower in
18 that foreign language.

19 (c) A violation of this section by a natural person who is a
20 licensee is a public offense punishable by a fine not exceeding ten
21 thousand dollars (\$10,000), by imprisonment in the county jail for
22 a term not to exceed one year, or by both that fine and
23 imprisonment, or if by a corporation, the violation is punishable
24 by a fine not exceeding fifty thousand dollars (\$50,000). These
25 penalties are cumulative to any other remedies or penalties
26 provided by law.

27 (d) This section shall apply only to mortgages and deeds of trust
28 secured by residential real property containing four or fewer
29 dwelling units.

30 ~~SEC. 7.~~

31 *SEC. 8.* Section 10177 of the Business and Professions Code
32 is amended to read:

33 10177. The commissioner may suspend or revoke the license
34 of a real estate licensee, or may deny the issuance of a license to
35 an applicant, who has done any of the following, or may suspend
36 or revoke the license of a corporation, or deny the issuance of a
37 license to a corporation, if an officer, director, or person owning
38 or controlling 10 percent or more of the corporation's stock has
39 done any of the following:

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

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

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

23 (d) Willfully disregarded or violated the Real Estate Law (Part
24 1 (commencing with Section 10000)) or Chapter 1 (commencing
25 with Section 11000) of Part 2 or the rules and regulations of the
26 commissioner for the administration and enforcement of the Real
27 Estate Law and Chapter 1 (commencing with Section 11000) of
28 Part 2.

29 (e) Willfully used the term “realtor” or a trade name or insignia
30 of membership in a real estate organization of which the licensee
31 is not a member.

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

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

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

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

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

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

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

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

32 (2) Notwithstanding paragraph (1), with respect to familial
33 status, paragraph (1) shall not be construed to apply to housing for
34 older persons, as defined in Section 12955.9 of the Government
35 Code. With respect to familial status, nothing in paragraph (1)
36 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
37 and 799.5 of the Civil Code, relating to housing for senior citizens.
38 Subdivision (d) of Section 51 and Section 1360 of the Civil Code
39 and subdivisions (n), (o), and (p) of Section 12955 of the
40 Government Code shall apply to paragraph (1).

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

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

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

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

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

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

31 ~~SEC. 8.~~

32 *SEC. 9.* Section 2944.6 is added to the Civil Code, to read:

33 2944.6. (a) Notwithstanding any other provision of law, any
34 person who negotiates, attempts to negotiate, arranges, attempts
35 to arrange, or otherwise offers to perform a mortgage loan
36 modification or other form of mortgage loan forbearance for a fee
37 or other compensation paid by the borrower, shall provide the
38 following to the borrower, as a separate statement, in not less than
39 14-point bold type, prior to entering into any fee agreement with
40 the borrower:

1
2 It is not necessary to pay a third party to arrange for a loan
3 modification or other form of forbearance from your mortgage
4 lender or servicer. You may call your lender directly to ask for a
5 change in your loan terms. Nonprofit housing counseling agencies
6 also offer these and other forms of borrower assistance free of
7 charge. A list of nonprofit housing counseling agencies approved
8 by the United States Department of Housing and Urban
9 Development (HUD) is available from your local HUD office or
10 by visiting www.hud.gov.

11
12 (b) If loan modification or other mortgage loan forbearance
13 services are offered or negotiated in one of the languages set forth
14 in Section 1632, a translated copy of the statement in subdivision
15 (a) shall be provided to the borrower in that foreign language.

16 (c) A violation of this section by a natural person is a public
17 offense punishable by a fine not exceeding ten thousand dollars
18 (\$10,000), by imprisonment in the county jail for a term not to
19 exceed one year, or by both that fine and imprisonment, or if by
20 a business entity, the violation is punishable by a fine not exceeding
21 fifty thousand dollars (\$50,000). These penalties are cumulative
22 to any other remedies or penalties provided by law.

23 (d) This section does not apply to a person, or an agent acting
24 on that person's behalf, offering loan modification or other loan
25 forbearance services for a loan owned or serviced by that person.

26 (e) This section shall apply only to mortgages and deeds of trust
27 secured by residential real property containing four or fewer
28 dwelling units.

29 ~~SEC. 9.~~

30 *SEC. 10.* Section 2944.7 is added to the Civil Code, to read:

31 2944.7. (a) Notwithstanding any other provision of law, it
32 shall be unlawful for any person who negotiates, attempts to
33 negotiate, arranges, attempts to arrange, or otherwise offers to
34 perform a mortgage loan modification or other form of mortgage
35 loan forbearance for a fee or other compensation paid by the
36 borrower, to do any of the following:

37 (1) Claim, demand, charge, collect, or receive any compensation
38 until after the person has fully performed each and every service
39 the person contracted to perform or represented that he or she
40 would perform.

1 (2) Take any wage assignment, any lien of any type on real or
2 personal property, or other security to secure the payment of
3 compensation.

4 (3) Take any power of attorney from the borrower for any
5 purpose.

6 (b) A violation of this section by a natural person is a public
7 offense punishable by a fine not exceeding ten thousand dollars
8 (\$10,000), by imprisonment in the county jail for a term not to
9 exceed one year, or by both that fine and imprisonment, or if by
10 a business entity, the violation is punishable by a fine not exceeding
11 fifty thousand dollars (\$50,000). These penalties are cumulative
12 to any other remedies or penalties provided by law.

13 (c) Nothing in this section precludes a person, or an agent acting
14 on that person's behalf, who offers loan modification or other loan
15 forbearance services for a loan owned or serviced by that person,
16 from doing any of the following:

17 (1) Collecting principal, interest, or other charges under the
18 terms of a loan, before the loan is modified, including charges to
19 establish a new payment schedule, after the borrower reduces the
20 unpaid principal balance for the express purpose of lowering the
21 monthly payment due under the terms of the loan.

22 (2) Collecting principal, interest, or other charges under the
23 terms of a loan, after the loan is modified.

24 (3) Accepting payment from a federal agency in connection
25 with the federal Making Home Affordable Plan or other federal
26 plan intended to help borrowers refinance or modify their loans
27 or otherwise avoid foreclosures.

28 (d) This section shall apply only to mortgages and deeds of trust
29 secured by residential real property containing four or fewer
30 dwelling units.

31 (e) This section shall remain in effect only until January 1, 2013,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2013, deletes or extends that date.

34 ~~SEC. 10.~~

35 *SEC. 11.* Section 2945.1 of the Civil Code is amended to read:

36 2945.1. The following definitions apply to this chapter:

37 (a) "Foreclosure consultant" means any person who makes any
38 solicitation, representation, or offer to any owner to perform for
39 compensation or who, for compensation, performs any service

- 1 which the person in any manner represents will in any manner do
2 any of the following:
- 3 (1) Stop or postpone the foreclosure sale.
 - 4 (2) Obtain any forbearance from any beneficiary or mortgagee.
 - 5 (3) Assist the owner to exercise the right of reinstatement
6 provided in Section 2924c.
 - 7 (4) Obtain any extension of the period within which the owner
8 may reinstate his or her obligation.
 - 9 (5) Obtain any waiver of an acceleration clause contained in
10 any promissory note or contract secured by a deed of trust or
11 mortgage on a residence in foreclosure or contained that deed of
12 trust or mortgage.
 - 13 (6) Assist the owner to obtain a loan or advance of funds.
 - 14 (7) Avoid or ameliorate the impairment of the owner's credit
15 resulting from the recording of a notice of default or the conduct
16 of a foreclosure sale.
 - 17 (8) Save the owner's residence from foreclosure.
 - 18 (9) Assist the owner in obtaining from the beneficiary,
19 mortgagee, trustee under a power of sale, or counsel for the
20 beneficiary, mortgagee, or trustee, the remaining proceeds from
21 the foreclosure sale of the owner's residence.
- 22 (b) A foreclosure consultant does not include any of the
23 following:
- 24 (1) A person licensed to practice law in this state when the
25 person renders service in the course of his or her practice as an
26 attorney at law.
 - 27 (2) A person licensed under Division 3 (commencing with
28 Section 12000) of the Financial Code when the person is acting
29 as a prorater as defined therein.
 - 30 (3) A person licensed under Part 1 (commencing with Section
31 10000) of Division 4 of the Business and Professions Code when
32 the person is acting under the authority of that license, as described
33 in Section 10131 or 10131.1 of the Business and Professions Code.
 - 34 (4) A person licensed under Chapter 1 (commencing with
35 Section 5000) of Division 3 of the Business and Professions Code
36 when the person is acting in any capacity for which the person is
37 licensed under those provisions.
 - 38 (5) A person or his or her authorized agent acting under the
39 express authority or written approval of the Department of Housing

1 and Urban Development or other department or agency of the
2 United States or this state to provide services.

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

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

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

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

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

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

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

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

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

33 (3) Contacting creditors on behalf of an owner of a residence
34 in foreclosure.

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

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

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

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

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

22 (f) "Residence in foreclosure" means a residence in foreclosure
23 as defined in Section 1695.1.

24 (g) "Owner" means a property owner as defined in Section
25 1695.1.

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

29 ~~SEC. 11.~~

30 *SEC. 12.* Section 22161 of the Financial Code is amended to
31 read:

32 22161. (a) No person shall make a materially false or
33 misleading statement or representation to a borrower about the
34 terms or conditions of that borrower's loan, when making or
35 brokering the loan.

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. 12.~~

7 *SEC. 13.* No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

16 ~~SEC. 13.~~

17 *SEC. 14.* This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety within
19 the meaning of Article IV of the Constitution and shall go into
20 immediate effect. The facts constituting the necessity are:

21 With foreclosures at historic levels, foreclosure rescue scams
22 are pervasive and rampant. In order to prevent financially stressed
23 homeowners from being victimized and to provide them with
24 needed protection at the earliest possible time, it is necessary that
25 this act take effect immediately.