

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)**

January 22, 2009

An act to amend ~~Section~~ *Sections 10085, 10133.1, and 10177 of, and to add Sections 10085.6 and 10147.6 to* *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, ~~and to add Sections 2944.6 and 2944.7 to~~ *to add Section 2944.6 to, and to add and repeal Section 2944.7 of,* the Civil Code, and to ~~amend Sections 22161 and 22301 of, and to add Sections 1243, 14962, and 50002.5 to,~~ *amend Section 22161 of* 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 specified provisions of those acts is a crime.

This bill would, *until January 1, 2013*, prohibit any person, including a real estate licensee, who, ~~for compensation, solicits customers for, or offers to perform, 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. ~~The bill would also prohibit finance lenders and brokers, 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.~~

This bill would also require any person, including a real estate licensee, who, ~~for compensation, solicits customers for, or offers to perform, 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 ~~any~~ a materially false;

~~deceptive, or misleading statement, or representation, or omission in the course of a licensee's lending or brokering activities 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 law authorizes the commissioner to require that materials used in obtaining advance fee agreements 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 nonprofit 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.

(2)

(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.

~~(3)–~~

(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.

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 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 prohibited under 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 prohibited under Section 2944.6
15 of the Civil Code.

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

17 SEC. 3. Section 10085 of the Business and Professions Code
18 is amended to read:

19 10085. The commissioner may require that any or all materials
20 used in obtaining advance fee agreements, including but not limited
21 to the contract forms, letters or cards used to solicit prospective

1 sellers, and radio and television advertising be submitted to him
2 or her at least 10 calendar days before they are used. Should the
3 commissioner determine that any such matter, when used alone
4 or with any other matter, would tend to mislead he or she may,
5 within 10 calendar days of the date he or she receives same, order
6 that it not be used, disseminated, nor published. Any person *or*
7 *entity* using, disseminating, or publishing any matter which the
8 commissioner has ordered, pursuant to this section, not to be used,
9 published, or disseminated shall be guilty of a misdemeanor
10 punishable by a fine not exceeding ~~one~~ *two thousand five hundred*
11 ~~dollars (\$1,000)~~ *dollars (\$2,500)* or by imprisonment in the county jail
12 not exceeding six months, or both, for each such use, dissemination,
13 or publication.

14 The commissioner may determine the form of the advance fee
15 agreements, and all material used in soliciting prospective owners
16 and sellers shall be used in the form and manner which he or she
17 determines is necessary to carry out the purposes and intent of this
18 part.

19 Any violation of any of the provisions of this part or of the rules,
20 regulations, orders or requirements of the commissioner thereunder
21 shall constitute grounds for disciplinary action against a licensee,
22 or for proceedings under Section 10081 of this code, or both. These
23 sanctions are in addition to the criminal proceedings hereinbefore
24 provided.

25 SECTION 1.

26 SEC. 4. Section 10085.6 is added to the Business and
27 Professions Code, to read:

28 10085.6. (a) Notwithstanding any other provision of law, it
29 shall be unlawful for any licensee who ~~solicits customers for the~~
30 ~~purpose of helping negotiate a mortgage loan modification or other~~
31 ~~form of mortgage loan forbearance for a fee or other compensation,~~
32 ~~or who otherwise offers to perform these services for a borrower~~
33 ~~for a fee or other compensation~~ *negotiates, attempts to negotiate,*
34 *arranges, attempts to arrange, or otherwise offers to perform a*
35 *mortgage loan modification or other form of mortgage loan*
36 *forbearance for a fee or other compensation paid by the borrower,*
37 to do any of the following:

38 (1) Claim, demand, charge, collect, or receive any compensation
39 until after the licensee has fully performed each and every service

1 the licensee contracted to perform or represented that he, she, or
2 it would perform.

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

6 (3) Take any power of attorney from the borrower for any
7 purpose.

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

16 (c) *This section shall apply only to mortgages and deeds of trust*
17 *secured by residential real property containing four or fewer*
18 *dwelling units.*

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

22 SEC. 5. *Section 10133.1 of the Business and Professions Code*
23 *is amended to read:*

24 10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section
25 10131.1, Article 5 (commencing with Section 10230), and Article
26 7 (commencing with Section 10240) of this code and Section
27 1695.13 of the Civil Code do not apply to any of the following:

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

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

37 (3) Any corporation, association, syndicate, joint stock company,
38 or partnership engaged exclusively in the business of marketing
39 agricultural, horticultural, viticultural, dairy, livestock, poultry, or
40 bee products on a cooperative nonprofit basis, in loaning or

1 advancing money to the members thereof or in connection with
2 any business of that type.

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

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

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

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

21 (8) Any person authorized in writing by a savings institution to
22 act as an agent of that institution, as authorized by Section 6520
23 of the Financial Code or comparable authority of the Office of
24 Thrift Supervision of the United States Department of the Treasury
25 by its regulations, when acting under the authority of that written
26 authorization.

27 (9) Any person who is licensed as a securities broker or
28 securities dealer under any law of this state, or of the United States,
29 or any employee, officer, or agent of that person, if that person,
30 employee, officer, or agent is acting within the scope of authority
31 granted by that license in connection with a transaction involving
32 the offer, sale, purchase, or exchange of a security representing an
33 ownership interest in a pool of promissory notes secured directly
34 or indirectly by liens on real property, which transaction is subject
35 to any law of this state or the United States regulating the offer or
36 sale of securities.

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

39 (11) *Any nonprofit, community-based organization, or an*
40 *employee of such an organization, that has been approved by the*

1 *United States Department of Housing and Urban Development*
2 *pursuant to Section 106(a)(1)(iii) of the federal Housing and Urban*
3 *Development Act of 1968 (12 USC 1701x), to provide counseling*
4 *services, when those services are provided at no cost to the*
5 *borrower and are in connection with the modification of the terms*
6 *of a loan secured directly or collaterally by a lien on single-family*
7 *residential real property.*

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

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

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

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

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

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

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

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

9 ~~SEC. 2.~~

10 SEC. 6. Section 10147.6 is added to the Business and
11 Professions Code, to read:

12 10147.6. (a) ~~Any licensee who solicits customers for the~~
13 ~~purpose of helping negotiate a mortgage loan modification or other~~
14 ~~form of mortgage loan forbearance for a fee or other form of~~
15 ~~compensation, or who otherwise offers to perform these services~~
16 ~~for a borrower for a fee or other form of compensation, shall~~
17 ~~negotiates, attempts to negotiate, arranges, attempts to arrange,~~
18 ~~or otherwise offers to perform a mortgage loan modification or~~
19 ~~other form of mortgage loan forbearance for a fee or other form~~
20 ~~of compensation paid by the borrower, shall provide the following~~
21 ~~to the borrower, as a separate statement, in not less than 14-point~~
22 ~~bold type, prior to entering into any fee agreement with the~~
23 ~~borrower:~~

24
25 It is not necessary to pay a third party to arrange for a loan
26 modification or other form of forbearance from your mortgage
27 lender or servicer. You may call your lender directly to ask for a
28 change in your loan terms. Nonprofit housing counseling agencies
29 also offer these and other forms of borrower assistance free of
30 charge. A list of nonprofit housing counseling agencies approved
31 by the United States Department of Housing and Urban
32 Development (HUD) is available from your local HUD office or
33 by visiting www.hud.gov.

34
35 (b) If loan modification or other mortgage loan forbearance
36 services are offered or negotiated in one of the foreign languages
37 set forth in Section 1632 of the Civil Code, a translated copy of
38 the statement in subdivision (a) shall be provided to the borrower
39 in that foreign language.

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

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

~~SEC. 3.~~

SEC. 7. Section 10177 of the Business and Professions Code is amended to read:

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

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

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

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization

1 membership, or business, or concerning a business opportunity or
2 a land or subdivision, as defined in Chapter 1 (commencing with
3 Section 11000) of Part 2, offered for sale.

4 (d) Willfully disregarded or violated the Real Estate Law (Part
5 1 (commencing with Section 10000)) or Chapter 1 (commencing
6 with Section 11000) of Part 2 or the rules and regulations of the
7 commissioner for the administration and enforcement of the Real
8 Estate Law and Chapter 1 (commencing with Section 11000) of
9 Part 2.

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

13 (f) Acted or conducted himself or herself in a manner that would
14 have warranted the denial of his or her application for a real estate
15 license, or has either had a license denied or had a license issued
16 by another agency of this state, another state, or the federal
17 government revoked or suspended for acts that, if done by a real
18 estate licensee, would be grounds for the suspension or revocation
19 of a California real estate license, if the action of denial, revocation,
20 or suspension by the other agency or entity was taken only after
21 giving the licensee or applicant fair notice of the charges, an
22 opportunity for a hearing, and other due process protections
23 comparable to the Administrative Procedure Act (Chapter 3.5
24 (commencing with Section 11340), Chapter 4 (commencing with
25 Section 11370), and Chapter 5 (commencing with Section 11500)
26 of Part 1 of Division 3 of Title 2 of the Government Code), and
27 only upon an express finding of a violation of law by the agency
28 or entity.

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

31 (h) As a broker licensee, failed to exercise reasonable
32 supervision over the activities of his or her salespersons, or, as the
33 officer designated by a corporate broker licensee, failed to exercise
34 reasonable supervision and control of the activities of the
35 corporation for which a real estate license is required.

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

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

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

6 (l) (1) Solicited or induced the sale, lease, or listing for sale or
7 lease of residential property on the ground, wholly or in part, of
8 loss of value, increase in crime, or decline of the quality of the
9 schools due to the present or prospective entry into the
10 neighborhood of a person or persons having a characteristic listed
11 in subdivision (a) or (d) of Section 12955 of the Government Code,
12 as those characteristics are defined in Sections 12926 and 12926.1,
13 subdivision (m) and paragraph (1) of subdivision (p) of Section
14 12955, and Section 12955.2 of the Government Code.

15 (2) Notwithstanding paragraph (1), with respect to familial
16 status, paragraph (1) shall not be construed to apply to housing for
17 older persons, as defined in Section 12955.9 of the Government
18 Code. With respect to familial status, nothing in paragraph (1)
19 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
20 and 799.5 of the Civil Code, relating to housing for senior citizens.
21 Subdivision (d) of Section 51 and Section 1360 of the Civil Code
22 and subdivisions (n), (o), and (p) of Section 12955 of the
23 Government Code shall apply to paragraph (1).

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

28 (n) Violated the Corporate Securities Law of 1968 (Division 1
29 (commencing with Section 25000) of Title 4 of the Corporations
30 Code) or the regulations of the Commissioner of Corporations
31 pertaining thereto.

32 (o) Failed to disclose to the buyer of real property, in a
33 transaction in which the licensee is an agent for the buyer, the
34 nature and extent of a licensee's direct or indirect ownership
35 interest in that real property. The direct or indirect ownership
36 interest in the property by a person related to the licensee by blood
37 or marriage, by an entity in which the licensee has an ownership
38 interest, or by any other person with whom the licensee has a
39 special relationship shall be disclosed to the buyer.

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

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

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

~~SEC. 4.~~

SEC. 8. Section 2944.6 is added to the Civil Code, to read:

2944.6. (a) Notwithstanding any other provision of law, any ~~person who solicits customers for the purpose of helping negotiate a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation, or who otherwise offers to perform these services for a borrower for a fee or other compensation~~ *person 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 compensation paid by the borrower,* shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

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

(b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the foreign languages

1 set forth in Section 1632, a translated copy of the statement in
2 subdivision (a) shall be provided to the borrower in that foreign
3 language.

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

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

14 (e) *This section shall apply only to mortgages and deeds of trust*
15 *secured by residential real property containing four or fewer*
16 *dwelling units.*

17 ~~SEC. 5.~~

18 SEC. 9. Section 2944.7 is added to the Civil Code, to read:

19 2944.7. (a) Notwithstanding any other provision of law, it
20 shall be unlawful for any person who ~~solicits customers for the~~
21 ~~purpose of helping negotiate a mortgage loan modification or other~~
22 ~~form of mortgage loan forbearance for a fee or other compensation,~~
23 ~~or who otherwise offers to perform these services for a borrower~~
24 ~~for a fee or other compensation negotiates, attempts to negotiate,~~
25 ~~arranges, attempts to arrange, or otherwise offers to perform a~~
26 ~~mortgage loan modification or other form of mortgage loan~~
27 ~~forbearance for a fee or other compensation paid by the borrower,~~
28 to do any of the following:

29 (1) 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 (2) 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 (3) Take any power of attorney from the borrower for any
37 purpose.

38 (b) A violation of this section by a natural person is a public
39 offense punishable by a fine not exceeding ten thousand dollars
40 (\$10,000), by imprisonment in the county jail for a term not to

1 exceed one year, or by both that fine and imprisonment, or if by
2 a corporation, the violation is punishable by a fine not exceeding
3 fifty thousand dollars (\$50,000). These penalties are cumulative
4 to any other remedies or penalties provided by law.

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

9 *(1) Collecting principal, interest, or other charges under the*
10 *terms of a loan, before the loan is modified, including charges to*
11 *establish a new payment schedule, after the borrower reduces the*
12 *unpaid principal balance for the express purpose of lowering the*
13 *monthly payment due under the terms of the loan.*

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

16 *(3) Accepting payment from a federal agency in connection with*
17 *the federal Making Home Affordable Plan or other federal plan*
18 *intended to help borrowers refinance or modify their loans or*
19 *otherwise avoid foreclosures.*

20 *(d) This section shall apply only to mortgages and deeds of trust*
21 *secured by residential real property containing four or fewer*
22 *dwelling units.*

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

26 ~~SEC. 6:~~

27 *SEC. 10.* Section 2945.1 of the Civil Code is amended to read:

28 2945.1. The following definitions apply to this chapter:

29 (a) "Foreclosure consultant" means any person who makes any
30 solicitation, representation, or offer to any owner to perform for
31 compensation or who, for compensation, performs any service
32 which the person in any manner represents will in any manner do
33 any of the following:

34 (1) Stop or postpone the foreclosure sale.

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

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

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

1 (5) Obtain any waiver of an acceleration clause contained in
2 any promissory note or contract secured by a deed of trust or
3 mortgage on a residence in foreclosure or contained that deed of
4 trust or mortgage.

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

6 (7) Avoid or ameliorate the impairment of the owner's credit
7 resulting from the recording of a notice of default or the conduct
8 of a foreclosure sale.

9 (8) Save the owner's residence from foreclosure.

10 (9) Assist the owner in obtaining from the beneficiary,
11 mortgagee, trustee under a power of sale, or counsel for the
12 beneficiary, mortgagee, or trustee, the remaining proceeds from
13 the foreclosure sale of the owner's residence.

14 (b) A foreclosure consultant does not include any of the
15 following:

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

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

22 (3) A person licensed under Part 1 (commencing with Section
23 10000) of Division 4 of the Business and Professions Code when
24 the person is acting under the authority of that license, as described
25 in Section 10131 or 10131.1 of the Business and Professions Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a

1 residence in foreclosure pursuant to a power of sale contained in
2 any deed of trust.

3 (8) Arranging or attempting to arrange for the payment by the
4 beneficiary, mortgagee, trustee under a power of sale, or counsel
5 for the beneficiary, mortgagee, or trustee, of the remaining proceeds
6 to which the owner is entitled from a foreclosure sale of the
7 owner's residence in foreclosure. Arranging or attempting to
8 arrange for the payment shall include any arrangement where the
9 owner transfers or assigns the right to the remaining proceeds of
10 a foreclosure sale to the foreclosure consultant or any person
11 designated by the foreclosure consultant, whether that transfer is
12 effected by agreement, assignment, deed, power of attorney, or
13 assignment of claim.

14 (f) "Residence in foreclosure" means a residence in foreclosure
15 as defined in Section 1695.1.

16 (g) "Owner" means a property owner as defined in Section
17 1695.1.

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

21 ~~SEC. 7. Section 1243 is added to the Financial Code, to read:~~

22 ~~1243. (a) No bank shall directly or indirectly charge, contract~~
23 ~~for, or receive any interest or charge of any nature for performing~~
24 ~~services for a borrower in connection with either of the 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.~~

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 ~~(b) Nothing in this section precludes a bank from doing either~~
33 ~~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~~
37 ~~with the federal Homeowner Affordability and Stability Plan or~~
38 ~~other federal plan intended to help reduce foreclosures.~~

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

1 ~~14962. (a) No credit union shall directly or indirectly charge,~~
2 ~~contract for, or receive any interest or charge of any nature for~~
3 ~~performing services for a borrower in connection with either of~~
4 ~~the following:~~

5 ~~(1) The actual or attempted modification of the terms of a loan~~
6 ~~secured directly or collaterally by a lien on single-family residential~~
7 ~~real property.~~

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

12 ~~(b) Nothing in this section precludes a credit union from doing~~
13 ~~either of the following:~~

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

16 ~~(2) Accepting payment from a federal agency in connection~~
17 ~~with the federal Homeowner Affordability and Stability Plan or~~
18 ~~other federal plan intended to help reduce foreclosures.~~

19 ~~SEC. 9.~~

20 ~~SEC. 11.~~ Section 22161 of the Financial Code is amended to
21 read:

22 ~~22161. (a) No person shall make a false, deceptive, or~~
23 ~~misleading statement, representation, or omission in the course of~~
24 ~~his or her lending or brokering activities. *materially false or*~~
25 ~~*misleading statement or representation to a borrower about the*~~
26 ~~*terms or conditions of that borrower's loan, when making or*~~
27 ~~*brokering the loan.*~~

28 ~~(b) No person shall advertise, print, display, publish, distribute,~~
29 ~~or broadcast, or cause or permit to be advertised, printed, displayed,~~
30 ~~published, distributed, or broadcast in any manner, any statement~~
31 ~~or representation with regard to the business subject to the~~
32 ~~provisions of this division, including the rates, terms, or conditions~~
33 ~~for making or negotiating loans, that is false, misleading, or~~
34 ~~deceptive, or that omits material information that is necessary to~~
35 ~~make the statements not false, misleading, or deceptive, or in the~~
36 ~~case of a licensee, that refers to the supervision of the business by~~
37 ~~the state or any department or official of the state.~~

38 ~~SEC. 10.~~ Section 22301 of the Financial Code is amended to
39 read:

1 ~~22301. (a) No licensee shall directly or indirectly charge,~~
2 ~~contract for, or receive any interest or charge of any nature with~~
3 ~~respect to a loan of five thousand dollars (\$5,000) or more unless~~
4 ~~the loan is made.~~

5 ~~(b) Notwithstanding subdivision (a), whenever a loan of five~~
6 ~~thousand dollars (\$5,000) or more is not consummated because of~~
7 ~~the borrower's failure to disclose outstanding liens or other~~
8 ~~information essential to making the loan or solely because of the~~
9 ~~borrower's failure to complete the loan in accordance with the~~
10 ~~loan application, a licensee may charge, contract for, and receive~~
11 ~~an amount equal to the actual expenses incurred by the licensee~~
12 ~~in connection with the preparation for the loan.~~

13 ~~(c) No licensee shall directly or indirectly charge, contract for,~~
14 ~~or receive any interest or charge of any nature for performing~~
15 ~~services for a borrower in connection with either of the following:~~

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

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

23 ~~(d) Nothing in this section precludes a licensee from doing either~~
24 ~~of the following:~~

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

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

30 ~~SEC. 11. Section 50002.5 is added to the Financial Code, to~~
31 ~~read:~~

32 ~~50002.5. (a) No licensee shall directly or indirectly charge,~~
33 ~~contract for, or receive any interest or charge of any nature for~~
34 ~~performing services for a borrower in connection with either of~~
35 ~~the following:~~

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

39 ~~(2) The actual or attempted negotiation of another form of~~
40 ~~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 licensee from doing either~~
4 ~~of the following:~~

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

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

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