

AMENDED IN SENATE MAY 21, 2009

SENATE BILL

No. 491

Introduced by Senator Maldonado Dutton

February 26, 2009

An act to add Section 10166 to the Business and Professions Code, and to add Sections 403.5, 5505.5, 14157, 22113, and 50131 to, and to add Division 1.9 (commencing with Section 4992) to, the Financial Code, relating to mortgage loan originators. An act to repeal and add Division 3 (commencing with Section 28000) of Title 4 of the Corporations Code, relating to capital access companies, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 491, as amended, ~~Maldonado Dutton. Mortgage loan originators: Nationwide Mortgage Licensing System and Registry. Capital access companies.~~

Existing law, the Capital Access Company Law, provides for the licensure and regulation by the Commissioner of Corporations of capital access companies to enable those entities to provide risk capital and management assistance to small businesses in the state, exempt from the requirements of the federal Investment Company Act of 1940. A violation of the Capital Access Company Law may be punishable as a crime or by the imposition of civil penalties, as specified.

This bill would repeal and recast the provisions of the Capital Access Company Law. The bill would require the commissioner to administer and enforce the Capital Access Company Law. The bill would establish procedures for the licensure of applicants to operate as a capital access company, including requiring the commissioner to determine whether an applicant meets specified requirements before issuing a license. The

bill would authorize the commissioner to issue regulations and orders in administering the Capital Access Company Law. The bill would prohibit a person from acquiring control of a licensee without the prior approval of the commissioner. The bill would require the establishment of a capital access company advisory council, as specified, which would be required to adopt rules and regulations relative to the licensure and regulation of capital access companies. The bill would also establish unspecified fees to be paid to the commissioner when, among other things, an application is filed with the commissioner or when a licensee or any affiliate of a licensee is examined.

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

~~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 and industrial banks by the Commissioner of Financial Institutions. The Savings Association Law provides for the regulation of state savings associations 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.~~

~~Existing federal law, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, provides for a Nationwide Mortgage Licensing System and Registry for the state licensing and registration of state-licensed loan originators, as defined, and the registration of registered loan originators, as defined. The act requires state compliance with the requirements of the act, as specified, and sets forth, among others, minimum testing and education standards.~~

~~This bill would provide for state compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and would require the state registration of mortgage loan originators, as defined. The bill would require the Department of Real Estate, the Department of Corporations, and the Department of Financial Institutions to implement that registration in accordance with the above-described federal standards, and would impose registrant examination and~~

~~education requirements, including continuing education requirements. The bill would implement specified recordkeeping and reporting requirements, and would set forth penalty provisions for the violation thereof.~~

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

~~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~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~-no.

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

1 SECTION 1. Division 3 (commencing with Section 28000) of
2 Title 4 of the Corporations Code is repealed.
3 SEC. 2. Division 3 (commencing with Section 28000) is added
4 to Title 4 of the Corporations Code, to read:

5
6 DIVISION 3. CAPITAL ACCESS COMPANY LAW

7
8 28000. This division shall be known and may be cited as the
9 Capital Access Company Law.

10 28001. This division shall be liberally construed to accomplish
11 its purposes.

12 28002. The Legislature finds all of the following:

13 (a) It is necessary to increase job opportunities in the state.

14 (b) Promoting the establishment, growth, and expansion of small
15 business firms in this state is an efficient way to increase job
16 opportunities in the state.

17 (c) Small business firms are unable to grow and create job
18 opportunities unless they have access to risk capital.

19 (d) Congress has exempted from the provisions of the federal
20 Investment Company Act of 1940 certain companies that are not
21 in the business of issuing redeemable securities, the operations of
22 which are subject to state regulation governing entities that provide

1 *financial or managerial assistance to enterprises doing business*
2 *or proposing to do business in the state.*

3 *(e) Therefore, in order for the state to obtain the full benefits*
4 *of that exemption, it is necessary that the state provide for the*
5 *licensure and regulation of capital access companies, to permit*
6 *these companies to operate pursuant to the exemption from*
7 *regulation under the federal Investment Company Act of 1940.*

8 28003. *(a) The purpose of this division is to provide for the*
9 *licensure and regulation of capital access companies that will*
10 *provide risk capital and management assistance primarily to*
11 *business firms in the state, to enable those companies to operate*
12 *pursuant to the exemption from regulation under the Investment*
13 *Company Act of 1940.*

14 *(b) The purposes of this division as set forth in subdivision (a)*
15 *constitute standards that the commissioner shall observe in*
16 *administering the provisions of this division.*

17 28004. *The following definitions shall apply for the purposes*
18 *of this division, unless the context otherwise requires:*

19 *(a) "Affiliate" means any person, other than a natural person,*
20 *controlling, controlled by or under common control with, another*
21 *specified person, directly or indirectly through one or more*
22 *intermediaries.*

23 *(b) "Commissioner" means the Commissioner of Corporations.*

24 *(c) "Control" means possession, direct or indirect, of the power*
25 *to vote the majority or more of any class of the voting securities*
26 *issued by a specified person, or to direct or cause the direction of*
27 *the management and policies of that specified person, whether*
28 *through the ownership of voting securities, by contract, or*
29 *otherwise.*

30 *(d) "License" means a license issued under this division*
31 *authorizing a business entity to transact business as a capital*
32 *access company.*

33 *(e) "Licensee" means a business entity that is licensed under*
34 *this division.*

35 *(f) "Person" means any natural person, proprietorship, joint*
36 *venture, partnership, trust, business trust, syndicate, association,*
37 *joint stock company, corporation, limited liability company,*
38 *government, agency of any government, or any other*
39 *organization. "Person," when used with respect to acquiring*

1 control of or controlling a specified person, includes any
2 combination of two or more persons acting in concert.

3 (g) “Resident business” means any person that transacts
4 business, or proposes to transact business, on a regular and
5 continual basis at one or more places of business in the state.

6 (h) “Security” has the meaning set forth in Section 25019.

7 (i) “Small business investment company” means any licensee
8 that is licensed by the United States Small Business Administration
9 to operate under the Small Business Investment Act of 1958 (Public
10 Law 85-699, as amended) and regulations thereunder.

11 (j) “To provide financing assistance to a person” means (1) to
12 lend money or otherwise extend credit to the person, (2) to
13 purchase securities issued by the person, either directly or
14 indirectly through a registered broker-dealer, or (3) to lease
15 property to the person.

16 (k) “To provide managerial assistance to a person” means to
17 provide management or technical advice, or management or
18 technical services, to the person.

19 28005. (a) Each applicant for a license to operate as a capital
20 access company under this division shall submit to the
21 commissioner an application in a form and including any
22 documentation as may be prescribed by the commissioner.

23 (b) (1) Not later than 90 days after the initial receipt by the
24 commissioner of an application under this section, the
25 commissioner shall provide the applicant with a written report
26 detailing the status of the application and any requirement
27 remaining for completion of the application.

28 (2) Within a reasonable time after receiving a completed
29 application submitted in accordance with this subdivision and in
30 accordance with any requirements as the commissioner may
31 prescribe by regulation, the commissioner shall do one of the
32 following:

33 (A) Approve the application and issue a license for operation
34 to the applicant if the requirements of this section are satisfied.

35 (B) Disapprove the application and notify the applicant in
36 writing of the disapproval and the reasons for the disapproval.

37 (c) In reviewing and processing any application under this
38 section, the commissioner shall determine whether the applicant
39 meets the following requirements:

1 (1) *The applicant is any form of business entity, including,*
2 *without limitation, a corporation, partnership, or limited liability*
3 *company organized under the laws of the state or any foreign*
4 *jurisdiction.*

5 (2) *The organizational documents of the applicant state that its*
6 *activities are limited to the promotion of economic, business, or*
7 *industrial development in the state through the provision of*
8 *financial or managerial assistance to resident businesses and any*
9 *other activities that are incidental or necessary to carry out that*
10 *purpose.*

11 (3) *Immediately following each sale of the securities of the*
12 *licensee by the licensee or any underwriter for the licensee, not*
13 *less than 80 percent of the securities of the licensee being offered*
14 *in that sale, on a class-by-class basis, are held by persons who*
15 *reside, or who have a substantial business presence, in the state.*

16 (4) *The securities of the licensee are sold, or proposed to be*
17 *sold, by the licensee or by any underwriter for the licensee, solely*
18 *to accredited investors, as that term is defined in Section 2(a)(15)*
19 *of the federal Securities Act of 1933, as amended (15 U.S.C. Sec.*
20 *77a), or to any other persons that the Securities and Exchange*
21 *Commission, as necessary or appropriate in the public interest*
22 *and consistent with the protection of investors, may permit by rule,*
23 *regulation, or order; and the licensee does not purchase any*
24 *securities issued by an investment company as defined in Section*
25 *3 of the federal Investment Company Act of 1940 or by any*
26 *company that would be an investment company except for the*
27 *exclusions from the definition of the terms “investment company”*
28 *under paragraph (1) or (7) of Section 3(a) of the federal Investment*
29 *Company Act of 1940, other than the following:*

30 (A) *Any debt security that is rated investment grade by not less*
31 *than one nationally recognized statistical rating organization.*

32 (B) *Any security issued by a registered open-end investment*
33 *company that is required by its investment policies to invest not*
34 *less than 65 percent of its total assets and securities described in*
35 *subdivision (a) or securities that are determined by that registered*
36 *open-end investment company to be comparable in quality to*
37 *securities described in subdivision (a).*

38 28006. *The commissioner shall administer the provisions of*
39 *this division.*

1 28007. (a) *The commissioner may from time to time issue any*
2 *regulations and orders as are, in his or her opinion, necessary to*
3 *carry out the provisions of this division.*

4 (b) *Regulations and orders issued under this division may,*
5 *among other things, define any term used in this division, as well*
6 *as any term not used in this division.*

7 (c) *For purposes of regulations and orders issued under this*
8 *division, the commissioner may classify persons, transactions, and*
9 *other matters within his or her jurisdiction, and may prescribe*
10 *different regulations or orders for different classes.*

11 (d) *The commissioner may waive any provision of any regulation*
12 *or order issued under this division in any case where, in his or her*
13 *opinion, the provision is not necessary in the public interest.*

14 28008. *Whenever the commissioner issues an order or license*
15 *under this division, he or she may impose any conditions as are*
16 *in his or her opinion necessary to carry out the provisions and*
17 *purposes of this division.*

18 28009. *Every final order, decision, license, or other official*
19 *act of the commissioner under this division is subject to judicial*
20 *review in accordance with law.*

21 28010. *No person shall, except with the prior approval of the*
22 *commissioner, acquire control of a licensee.*

23 28011. (a) *A capital access company advisory council shall*
24 *be appointed to adopt regulations under this division with the*
25 *participation and advice of the commissioner.*

26 (b) *The advisory council shall consist of seven persons, five of*
27 *whom shall be appointed by the Governor. One member shall be*
28 *appointed by the Senate Committee on Rules, and one member*
29 *shall be appointed by the Speaker of the Assembly. At least four*
30 *persons appointed to the advisory council shall have a minimum*
31 *of 10 years of direct experience in venture capital investment.*

32 (c) *The members of the advisory council shall not receive a*
33 *salary for their services but shall be reimbursed for their actual*
34 *and necessary travel and other expenses incurred in the*
35 *performance of their duties.*

36 28012. (a) *The advisory council shall adopt rules and*
37 *regulations to effectuate the purposes of this division, including,*
38 *but not limited to, guidelines to be used by the commissioner in*
39 *processing and evaluating license applications and regulatory*
40 *procedures to ensure compliance with this division. The advisory*

1 council shall establish guidelines to evaluate the performance of
2 licensees under this division.

3 (b) The advisory council shall adopt temporary guidelines within
4 six months of its initial meeting. The adoption of these temporary
5 guidelines shall not be subject to the procedures specified in
6 Chapter 3.5 (commencing with Section 11340) of Division 3 of
7 Title 2 of Government Code.

8 (c) Upon adoption of the temporary guidelines, the
9 commissioner may approve issuance of licenses pursuant to this
10 division. Licensees licensed pursuant to this division shall comply
11 with the temporary guidelines, the requirements of this division,
12 and, when adopted, the formal rules and regulations.

13 (d) Formal rules and regulations implementing this division
14 shall be adopted pursuant to Chapter 3.5 (commencing with Section
15 11340) of Division 3 of Title 2 of the Government Code and, upon
16 adoption, shall supersede the temporary guidelines adopted
17 pursuant to subdivision (b).

18 (e) On and after January 1, 2010, or upon an earlier date as
19 the advisory council completes its duties pursuant to this division,
20 the commissioner shall periodically review the effectiveness of the
21 rules and regulations adopted pursuant to this division and adopt
22 changes as necessary.

23 (f) The commissioner shall administer and enforce this division
24 and the rules and regulations adopted pursuant to this division
25 and may exercise any power conferred under Chapter 2
26 (commencing with Section 25530) of Part 6 of Division 1.

27 28013. If the licensee becomes licensed as a small business
28 investment company and is subject to regulation by the Small
29 Business Administration under the federal Small Business
30 Investment Act of 1958, the regulations under that act shall
31 supersede all of the regulatory requirements under this division
32 except those provisions required to exempt licensees from
33 regulation under the federal Investment Company Act of 1940.

34 28014. The commissioner may honor applications from
35 interested persons for interpretive opinions regarding any
36 provision of this division or of any regulation or order issued under
37 this division.

38 28015. Fees shall be paid to, and collected by, the
39 commissioner as follows:

1 (a) The fee for filing with the commissioner an application for
2 a license shall be ____ dollars (\$ ____).

3 (b) The fee for filing with the commissioner an application for
4 any other matter, including acquiring control of a licensee,
5 approval to merge with another corporation, approval for a
6 licensee to purchase all or substantially all of the business of
7 another person or licensee to sell all or substantially all of its
8 business, shall be ____ dollars (\$ ____).

9 (c) The fee for filing with the commissioner any other notice or
10 application shall be ____ dollars (\$ ____).

11 (d) Whenever the commissioner examines any licensee or any
12 affiliate of a licensee, the licensee shall pay, within 10 days after
13 receipt of a statement from the commissioner, ____ dollars (\$ ____)
14 per day for each examiner engaged in the examination. If it is
15 necessary for any examiner engaged in the examination to travel
16 outside the state, the travel expenses for the examiner shall be paid
17 by the licensee.

18 (e) No fee for filing an application with the commissioner shall
19 be refundable, regardless of whether the application is approved,
20 denied, withdrawn, or abandoned.

21 SEC. 3. This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 In order to promote the establishment, growth, and expansion
26 of small business firms in this state to increase job opportunities
27 at the earliest possible time, it is necessary that this act take effect
28 immediately.

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**All matter omitted in this version of the bill
appears in the bill as introduced in Senate,
February 26, 2009 (JR11)**

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- 2 **CORRECTIONS:**
- 3 **Text—Page 9.**
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