

Senate Bill No. 1926

CHAPTER 772

An act to amend Sections 25005.1, 25212.1, 25213, 25213.3, 25232.1, 25232.3, 25530, 25532, and 25608 of the Corporations Code, to amend Sections 17214, 17606, 17609.2, 17627, 22157, 22705, 22712, 50320, and 50325 of, to add Section 22342 to, and to amend and renumber Section 17005.3 of, the Financial Code, relating to the Commissioner of Corporations.

[Approved by Governor September 20, 2002. Filed with Secretary of State September 21, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1926, Costa. Commissioner of Corporations.

(1) Existing law, the California Finance Lenders Law, provides for the regulation and licensure by the Commissioner of Corporations of persons engaging in the business of making consumer loans and commercial loans. A willful violation of the California Finance Lenders Law is a crime.

This bill would prohibit those persons from producing, advertising, offering, selling, distributing, or transferring for use in this state, any live check, as defined, unless the check contains a specified disclosure. The bill would prohibit live checks from being negotiable 30 days after the date printed on the live check. The bill would require a loan solicitation made through a live check to be honored in its full amount unless the account on which the solicitation is made is closed prior to the date the check is cashed. The bill would provide safeguards to protect consumers in the event a live check is used by someone other than the intended recipient of the live check. The bill would also authorize the commissioner to levy administrative penalties against licensees for willfully violating the bill.

Because a violation of this provision would be a crime, the bill would impose a state-mandated local program.

(2) Existing law requires a finance lender to retain specified records for 2 years.

The bill would increase the time for retaining these records to 3 years. The bill would make other changes with respect to the commissioner's authority to issue orders and enforce regulations relating to broker-dealers, escrow agents, finance lenders, and residential mortgage lenders.

(3) Existing law requires any person who engages in business as a broker-dealer to be licensed and regulated by the Commissioner of Corporations. Existing law, the Escrow Law, requires any person who engages in business as an escrow agent to be licensed and regulated by the commissioner. Existing law authorizes the commissioner to bring a civil action against a person who is in violation of a law or order regulating broker-dealers.

This bill would specify that in a case brought by the commissioner where a defendant is ordered to pay restitution, the order is deemed a money judgment and is fully enforceable by the victim as if it were a separate civil judgment.

(4) Existing law establishes the Escrow Law Advisory Committee and provides for the appointment and terms of its 11 members.

The bill would delete the requirement that the members from the Escrow Agents' Fidelity Corporation and the Escrow Institute of California serve 2-year terms.

(5) Existing law defines entity conversion transactions. Existing law authorizes the commissioner to charge and collect specified fees from broker-dealers regarding applications to sell specified securities.

This bill would expand the definition of entity transactions to include a conversion that occurs entirely out of state. The bill would require broker-dealers to pay a specified application fee to the commissioner if the broker-dealer engages in entity conversion transactions.

(6) This bill would incorporate additional changes to Section 25005.1 of the Corporations Code made by SB 399 if it is enacted prior to this bill.

(7) 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.

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

SECTION 1. Section 25005.1 of the Corporations Code is amended to read:

25005.1. "Entity conversion transaction" means a conversion pursuant to Section 15677.2, 15677.8, 16902, 16908, 17540.2, 17540.8, or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity



conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 1.5. Section 25005.1 of the Corporations Code is amended to read:

25005.1. “Entity conversion transaction” means a conversion pursuant to Section 1151, 1157, 15677.2, 15677.8, 16902, 16908, 17540.2, 17540.8, or a conversion that occurs entirely out of state, unless the interests in the entity resulting from the conversion to be held by the equity holders of the entity being converted as a result of the conversion are not securities. For purposes of Sections 25103 and 25120 an entity conversion transaction is not a change in the rights, preferences, privileges, or restrictions of or on outstanding securities or an exchange of securities by the issuer with its existing security holders exclusively.

SEC. 2. Section 25212.1 of the Corporations Code is amended to read:

25212.1. The commissioner may immediately revoke by order the certificate of any broker-dealer if the broker-dealer fails to comply with any currently effective order of the commissioner which is necessary for the protection of any investor, unless the broker-dealer secures a court order restraining the enforcement of the commissioner’s revocation order within 10 days of the date the order is issued.

SEC. 3. Section 25213 of the Corporations Code is amended to read:

25213. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or deny or bar from any position of employment, management or control of any broker-dealer or investment adviser, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, or any other person, if the commissioner finds that the censure, suspension, denial, or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25212 or has been convicted of, or pled nolo contendere to, any offense or been held liable in any civil action specified in subdivision (b) of Section 25212, or is enjoined from any act, conduct or practice specified in subdivision (c) of Section 25212 or is subject to any order specified in subdivision (d) of Section 25212.

SEC. 4. Section 25213.3 of the Corporations Code is amended to read:

25213.3. The commissioner shall, after appropriate notices and opportunity for hearing, by order suspend, for a period not exceeding 12 months, or bar from any position of employment, management or control of any broker-dealer, any officer, director, partner, agent,



employee of, or person performing similar functions for, a broker-dealer, or any other person, if the person has been convicted of, or has pleaded nolo contendere to, a felony or misdemeanor in violation of Section 25541 that was committed on or after January 1, 1989.

SEC. 5. Section 25232.1 of the Corporations Code is amended to read:

25232.1. The commissioner may, after appropriate notice and opportunity for hearing, by order censure, or suspend for a period not exceeding 12 months, or bar from any position of employment, management or control of any investment adviser, broker-dealer or commodity adviser, any officer, director, partner, employee of, or person performing similar functions for, an investment adviser, or any other person, if he or she finds that the censure, suspension or bar is in the public interest and that the person has committed any act or omission enumerated in subdivision (a), (e), (f), or (g) of Section 25232 or has been convicted of any offense or held liable in any civil action specified in subdivision (b) of Section 25232 or is enjoined from any act, conduct or practice specified in subdivision (c) of Section 25232 or is subject to any order specified in subdivision (d) of Section 25232.

SEC. 6. Section 25232.3 of the Corporations Code is amended to read:

25232.3. The commissioner may immediately revoke the certificate of any investment adviser if the investment adviser fails to comply with any currently effective order of the commissioner which is necessary for the protection of any investor, unless the investment adviser secures a court order restraining the enforcement of the commissioner's revocation order within 10 days of the date the order is issued.

SEC. 7. Section 25530 of the Corporations Code is amended to read:

25530. (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the



powers of the defendant's officers, directors, partners, trustees or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court, by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) In any case in which a defendant is ordered by the court to pay restitution to a victim, the court may in its order require the payment as a money judgment, which shall be enforceable by a victim as if the restitution order were a separate civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Any order issued under this subdivision shall contain provisions that are designed to achieve a fair and orderly satisfaction of the judgment.

SEC. 8. Section 25532 of the Corporations Code is amended to read:

25532. (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to qualification under this law and it is being or has been offered or sold without first being qualified, the commissioner may order the issuer or offeror of the security to desist and refrain from the further offer or sale of the security until qualification has been made under this law or (2) the sale of a security is subject to the requirements of Section 25100.1, 25101.1, or 25102.1 and the security is being or has been offered or sold without first meeting the requirements of those sections, the commissioner may order the issuer or offeror of that security to desist and refrain from the further offer or sale of the security until those requirements have been met.

(b) If, in the opinion of the commissioner, a person has been or is acting as a broker-dealer or investment adviser, or has been or is engaging in broker-dealer or investment adviser activities, in violation of Section 25210, 25230 or 25230.1, the commissioner may order that person to desist and refrain from the activity until the person has been appropriately licensed or the required filing has been made under this law.

(c) If, in the opinion of the commissioner, a person has violated or is violating Section 25401, the commissioner may order that person to desist and refrain from the violation.



(d) If, after an order has been made under subdivision (a), (b), or (c), a request for hearing is filed in writing within one year of the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless the hearing is commenced within 15 business days after the request is filed (or the person affected consents to a later date), the order is rescinded.

If that person fails to file a written request for a hearing within one year from the date of service of the order, the order shall be deemed a final order of the commissioner and is not subject to review by any court or agency, notwithstanding Section 25609.

SEC. 9. Section 25608 of the Corporations Code is amended to read:

25608. (a) The commissioner shall charge and collect the fees fixed in this section and Section 25608.1. All fees charged and collected under this section and Section 25608.1 shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the State Corporations Fund.

(b) The fee for filing an application for a negotiating permit under subdivision (c) of Section 25102 is fifty dollars (\$50).

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102 and the fee for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35
\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars (\$50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications



for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

The fee for filing a small company application for qualification of the sale of securities by permit under paragraph (2) of subdivision (b) of Section 25113 is two thousand five hundred dollars (\$2,500). In the case where the costs of processing a small company application exceed the filing fee, an additional fee shall be charged, not to exceed one thousand dollars (\$1,000), over and above the filing fee based on the costs of the salary or other compensation paid to persons processing the application plus overhead costs reasonably incurred in the performance of the work. In determining the costs, the commissioner may use the estimated average hourly cost for all persons processing applications for the fiscal year.

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):

(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

(2) Interim or voting trust certificates shall have a value equal to the aggregate value of the securities to be represented by the interim or voting trust certificates.

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount equal to the consideration to be paid for that warrant or right plus an amount equal to the consideration to be paid upon purchase of the additional securities, provided that if the latter amount is not determinable at the time of qualification, that amount shall then be the value of the additional securities as determined by the commissioner.

(4) In the case of a share dividend where the shareholders are given an option to accept either cash or additional shares of common stock, the value of the securities to be sold shall be the maximum amount of cash



that would be payable in the event that all shareholders elected to accept cash.

(h) The fee for filing an application for qualification of the sale of securities by permit under Section 25121 is:

(1) Two hundred dollars (\$200) in connection with any change (including any stock split or reverse stock split or stock dividend, except a stock dividend where the shareholders are given an option to accept either cash or additional shares of common stock) in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) Two hundred dollars (\$200) plus one-fifth of 1 percent of the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration to be received in exchange therefor, up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500), in any exchange of securities by the issuer with its existing security holders exclusively, or in any exchange in connection with any merger or consolidation or purchase of corporate assets in consideration of the issuance of securities, or any entity conversion transaction.

(i) The fee for filing an application for qualification of the sale of securities by notification under Section 25131 shall be one hundred dollars (\$100).

(j) The fee for an application for the removal of any condition under Section 25141 is fifty dollars (\$50).

(k) The fee for filing any application for a permit to execute or issue any guarantee of any security is fifty dollars (\$50).

(l) The fee for acting as escrowholder for securities under Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars and fifty cents (\$2.50) shall be paid for the deposit with the commissioner of each new certificate or other document resulting from a transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities or (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer is twenty dollars (\$20) for each transfer.

(n) The filing fee for an amendment to an application filed after the effective date of the qualification of the sale of securities is fifty dollars (\$50) plus any additional fee that would have been required to be paid with the original application for qualification of the sale of securities under this section if the matters set forth in the amendment had been included in the original application.

(o) (1) The fee for filing an application for a broker-dealer certificate under Section 25211 is three hundred dollars (\$300).



(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) Every broker-dealer who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a minimum assessment of seventy-five dollars (\$75) on or before the 31st of December in each year.

(4) The commissioner may assess and levy against each broker-dealer any additional amount above the minimum assessment amount of seventy-five dollars (\$75) that is reasonable and necessary to support the broker-dealer program under this division. If an additional amount is assessed, the commissioner shall notify each broker-dealer by mail of any additional amount assessed and levied against it on or before the 30th day of May in each year, and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(5) If a broker-dealer fails to pay any assessment on or before the 30th day of the month following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the broker-dealer. If, after that order is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a broker-dealer shall not conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided under this division.

(6) In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of the broker-dealer program under this division and all reimbursements applicable to the administration of the broker-dealer program under this division.



(p) The commissioner shall charge a fee of twenty-five dollars (\$25) for the filing of a notice or report required by rule adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(q) (1) Except as provided for in paragraph (2), the fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars (\$125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars (\$125) on or before the 31st day of December.

(2) Paragraph (1) shall not apply to a broker-dealer licensed under Section 25210.

(r) (1) Except as provided for in paragraph (2), the fee for any routine or nonroutine regulatory examination, audit, or investigation is the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses including overhead reasonably incurred in the performance of the work. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year.

(2) An investment adviser licensed under Section 25230 pursuant to the Investment Adviser Registration Depository shall not be subject to paragraph (1) only in regard to the fee for a routine regulatory examination of its investment advisory services for which it is licensed under Section 25230.

(s) The fee for any hearing held by the commissioner pursuant to Section 25142 shall be the sum determined by the commissioner to cover the actual expense of noticing and holding the hearing.

(t) The commissioner may fix by rule a reasonable charge for any publications issued under his or her authority. The charges shall not apply to reports of the commissioner in the ordinary course of distribution.

(u) The fee for filing an offer under subdivision (b) of Section 25507 shall be the amount of filing fee payable under subdivision (e), (f), (h), or (i) of this section if an application had been filed to qualify the transaction in which the securities upon which the offer is to be made were sold in violation of the qualification provisions of this law.

(v) The fee for filing an application for exemption pursuant to subdivision (l) of Section 25100 is two hundred fifty dollars (\$250).

(w) The commissioner may by rule require payment of a fee for filing a notice or report required by a rule adopted pursuant to Section 25105.



The fee required in connection with a transaction as defined by that rule shall not exceed the fees specified in subdivision (c) based on the value of the securities sold, but the commissioner may permit a single notice for more than one transaction.

(x) The fee for filing the first notice of transaction under subdivision (n) of Section 25102 is six hundred dollars (\$600).

(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars (\$600).

SEC. 10. Section 17005.3 of the Financial Code is amended and renumbered to read:

17005.4 “Person subject to this division” means any person undertaking the performance of escrow agent services. Unless specifically exempted, as in Section 17006, however, this definition shall not be used to exclude anyone.

SEC. 11. Section 17214 of the Financial Code is amended to read:

17214. (a) There is established in the Department of Corporations an Escrow Law Advisory Committee consisting of 11 members. The members shall consist of the commissioner or his or her designee; the chairman of the board and the immediate past chairman of the board for the Escrow Agents’ Fidelity Corporation; the current chairman of the board and the immediate past chairman of the board for the Escrow Institute of California; a person selected by the commissioner to represent a different type of business ownership under this division; a person selected by the commissioner to represent a different type of business specialization; a person selected by the commissioner to represent small businesses operating pursuant to this division; a person selected by the commissioner to represent medium-sized businesses operating pursuant to this division; an attorney at law experienced in escrow matters selected by the commissioner; and a certified public accountant experienced in the escrow business selected by the commissioner.

Except for the members from the Escrow Agents’ Fidelity Corporation and the Escrow Institute of California, members appointed by the commissioner shall serve for a term of two years.

The committee shall meet at least quarterly. The commissioner or his or her designee shall chair the committee. All members shall serve without compensation or reimbursement for expenses.

Where the chairman of the board or the immediate past chairman of the board of the Escrow Agents’ Fidelity Corporation is the same person,



or is unable to serve on the advisory committee, then the commissioner after consultation with the board of directors of the Escrow Agents' Fidelity Corporation, shall choose a member of the board of directors to serve on the committee. Where the president or past president of the Escrow Institute of California is the same person, or is unable to serve on the advisory committee, then the commissioner after consultation with the board of directors of the Escrow Institute of California, shall choose a member of the board of directors to serve on the committee.

(b) The purpose of the committee is to assist the commissioner in the implementation of the commissioner's duties under this chapter.

SEC. 12. Section 17606 of the Financial Code is amended to read:

17606. The commissioner may immediately revoke by order the escrow agent's license if the licensee fails to comply with any order, unless the escrow agent secures a court order restraining the enforcement of the commissioner's revocation order.

SEC. 13. Section 17609.2 of the Financial Code is amended to read:

17609.2. Whenever the commissioner deems it necessary for the general welfare of the public, the commissioner has continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

SEC. 14. Section 17627 of the Financial Code is amended to read:

17627. The commissioner may issue subpoenas and require the attendance of parties for examination under this article as provided for in this chapter.

SEC. 15. Section 22157 of the Financial Code is amended to read:

22157. Licensees shall preserve their books, accounts, and records, including cards used in the card system, if any, for at least three years after making the final entry on any loan recorded therein.

SEC. 16. Section 22342 is added to the Financial Code, to read:

22342. (a) As used in this section, "instant loan check" or "live check" means any loan or extension of credit that is made available in the form of a check, draft, or any other negotiable instrument that can be deposited in a bank or used for third-party payments. "Instant loan check" or "live check" does not include a check, draft, or any other negotiable instrument provided in response to an application for credit or as a means of access to an existing loan or extension of credit, including a home equity or personal line of credit.

(b) No person shall produce, advertise, offer, sell, distribute, or otherwise transfer for use in this state any live check unless the document bears the following phrase printed in 12-point type on the front of the



document: “THIS IS A LOAN OR AN EXTENSION OF CREDIT. YOU WILL PAY CHARGES.”

(c) Live checks shall only be negotiable for a period of 30 days after the date printed on the live check. Printed material accompanying the live check shall advise the consumer to void and destroy the live check if it is not going to be negotiated.

(d) Loan solicitations shall be mailed in envelopes with no indication that a negotiable instrument is contained in the mailing. Envelopes shall be marked with “do not forward” instructions to the postal service in the event that the intended addressee is no longer at the location.

(e) Any loan solicitation made through a live check shall be honored in the full amount by the issuer unless the account on which the solicitation is made is closed by the consumer prior to the date the check is cashed.

(f) In the event that a live check is stolen or incorrectly received by someone other than the intended payee, and the live check is cashed or otherwise negotiated based upon fraud or misrepresentation by someone other than the intended payee, the following safeguards for the consumer shall apply:

(1) The creditor, upon receipt of notification that the consumer did not negotiate the live check and is a victim of identity theft as defined in Section 1798.92 of the Civil Code, shall provide, and the consumer may complete, a statement confirming that the consumer did not deposit, cash, or otherwise negotiate the live check.

(2) Upon completion of the confirmation statement by the consumer, the consumer who was the intended payee shall have no liability for the loan obligation, absent any fraud by that consumer.

(3) Upon receipt of notification that the consumer did not negotiate the live check and is a victim of identity theft as defined in Section 1798.92 of the Civil Code, the creditor shall take appropriate actions set forth in Sections 1785.25 and 1785.26 of the Civil Code.

(g) The commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties against a licensee who violates this section, and the licensee shall be liable for administrative penalties of no more than two thousand five hundred dollars (\$2,500) for each willful violation. Any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted under the act. The remedy available under this subdivision is in addition to any other remedies available to the commissioner under this division that may be employed to enforce the provisions of this section.



(h) Nothing in this section shall preclude the application of any section or rule under this division.

SEC. 17. Section 22705 of the Financial Code is amended to read:

22705. Whenever the commissioner deems it necessary for the general welfare of the public, he or she has continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

SEC. 18. Section 22712 of the Financial Code is amended to read:

22712. Whenever, in the opinion of the commissioner, any person is engaged in business as a broker or finance lender, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

SEC. 19. Section 50320 of the Financial Code is amended to read:

50320. Whenever, in the opinion of the commissioner, a person is engaged, either actually or through subterfuge, in the business of making residential mortgage loans or servicing residential mortgage loans without a license from the commissioner, the commissioner may order that person to desist and refrain. If, within 30 days after an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days of the filing, the order is rescinded. This section does not apply to persons exempted under subdivision (g) of Section 50003.

SEC. 20. Section 50325 of the Financial Code is amended to read:

50325. The commissioner may immediately revoke the residential mortgage lender's or residential mortgage loan servicer's license if the licensee fails to comply with any order issued under Section 50318, 50319, 50321, 50322 or 50503. The commissioner shall not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.

SEC. 21. Section 1.5 of this bill incorporates amendments to Section 25005.1 of the Corporations Code proposed by both this bill and SB 399. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 25005.1 of the Corporations Code, and (3) this bill is enacted after SB 399, in which case Section 1 of this bill shall not become operative.



SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

