

ASSEMBLY BILL

No. 2880

**Introduced by Assembly Member Wolk
(Coauthor: Assembly Member Galgiani)**

February 22, 2008

An act to amend Section 10156.8 of, to add Sections 10131.9, 10131.91, 10150.1, and 10248.7 to, and to repeal Section 10131.8 of, the Business and Professions Code, and to amend Sections 22104, 22112, 23006, 50121, and 50205 of, and to add Sections 22168 and 50513 to, the Financial Code, relating to mortgage lending, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2880, as introduced, Wolk. Mortgage lending.

Existing law provides for the licensure and regulation of real estate brokers by the Real Estate Commissioner. Existing law provides for the licensure and regulation of finance lenders and brokers, persons in the deferred deposit transactions business, and residential mortgage lenders and servicers by the Department of Corporations. Existing law requires these licensees to pay specified licensing fees to, and requires finance lenders and residential mortgage lenders and servicers to maintain specified surety bonds with, their regulators. Existing law requires a real estate broker who solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, and who meet certain criteria, to annually notify the Department of Real Estate in writing. A willful violation of the law-regulating these licensees is a crime.

This bill would delete that notification requirement with respect to real estate brokers and instead require a real estate broker who, among other things, makes, arranges, or services loans secured by residential real property to notify the department in writing, as specified, pay a fee of \$750, and pay specified penalties for failing to provide that notification. The bill would also require the broker to file various reports with the department and pay a fee of \$600, and would authorize the commissioner to cause an examination and report to be made if the broker fails to timely file those reports. The bill would also require that a broker maintain a surety bond with the commissioner, as specified. Because the fees imposed by this bill would be deposited in the Real Estate Fund, which is continuously appropriated, the bill would make an appropriation. The bill would require penalties collected pursuant to these provisions to be deposited into the Recovery Account in the Real Estate Fund and be available for expenditure, as specified, upon appropriation by the Legislature.

The bill would provide that a broker, as defined, who provides brokerage services to a borrower in connection with specified consumer loans by soliciting lenders or otherwise negotiating consumer loans is the fiduciary of the borrower. The bill would create various duties that these brokers would be required to satisfy when making, arranging, or servicing consumer loans. The bill would prohibit brokers from receiving compensation for placing a borrower in a consumer loan that is more costly than that for which the borrower qualifies. The bill would prohibit a broker from, for a one-year period after consummation of a consumer loan that the broker negotiated or arranged, engaging in direct marketing with the borrower regarding refinancing the loan, as specified. The bill would make a broker that violates these provisions civilly liable to the borrower for damages and would authorize the court to award punitive damages to the borrower. Because a willful violation of these provisions by a real estate broker, a broker under the Finance Lenders Law, or a residential mortgage lender would be a crime, this bill would impose a state-mandated local program.

The bill would also increase the amounts of certain of the fees that finance lenders, deferred deposit transaction licensees, and residential mortgage lenders are required to pay to, and the amounts of the surety bonds brokers under the Finance Lenders Law and residential mortgage lenders are required to maintain with, their regulators, and the amount of net worth that must be maintained by a finance lender.

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: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 10131.8 of the Business and Professions
2 Code is repealed.

3 ~~10131.8. (a) A real estate broker who acts pursuant to~~
4 ~~subdivision (d) of Section 10131 and who meets all of the~~
5 ~~following requirements shall notify the department annually in~~
6 ~~writing on a form that is acceptable to the commissioner:~~

7 ~~(1) The real estate broker is an approved lender for the Federal~~
8 ~~Housing Administration, Veterans Administration, Farmers Home~~
9 ~~Administration, Government National Mortgage Association,~~
10 ~~Federal National Mortgage Administration, or the Federal Home~~
11 ~~Loan Mortgage Corporation.~~

12 ~~(2) The real estate broker makes residential mortgage loans to~~
13 ~~a loan applicant for a residential mortgage loan by using or~~
14 ~~advancing the broker's own funds, or by making a commitment~~
15 ~~to advance the broker's own funds.~~

16 ~~(3) The real estate broker makes the credit decision in the loan~~
17 ~~transaction.~~

18 ~~(4) The real estate broker at all times maintains a tangible net~~
19 ~~worth, computed in accordance with generally accepted accounting~~
20 ~~standards, of a minimum of two hundred fifty thousand dollars~~
21 ~~(\$250,000).~~

22 ~~(b) As used in paragraph (2) of subdivision (a), "own funds"~~
23 ~~means (1) cash, corporate capital, or warehouse credit lines at~~
24 ~~commercial banks, savings banks, savings and loan associations,~~
25 ~~industrial loan companies, or other sources that are liability items~~
26 ~~on the real estate broker's financial statements, whether secured~~
27 ~~or unsecured, or (2) cash, corporate capital, or warehouse credit~~
28 ~~lines at commercial banks, savings banks, savings and loan~~
29 ~~associations, industrial loan companies, or other sources that are~~
30 ~~liability items on the financial statements of an affiliate of the real~~

1 ~~estate broker, whether secured or unsecured. “Own funds” does~~
2 ~~not include funds provided by a third party to fund a loan on~~
3 ~~condition that the third party will subsequently purchase or accept~~
4 ~~an assignment of the loan.~~

5 SEC. 2. Section 10131.9 is added to the Business and
6 Professions Code, to read:

7 10131.9. (a) A real estate broker who acts pursuant to Section
8 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
9 arranges, or services loans secured by real property containing one
10 to four residential units, shall notify the department within 30 days
11 of the effective date of this section or upon commencing that
12 activity, whichever is later. The notification shall be made in
13 writing on a form that is acceptable to the commissioner. The
14 licensee shall send with the notification, a fee in the amount of
15 seven hundred fifty dollars (\$750) to cover the cost to the
16 department for reviewing the notification and for the regulation
17 of brokers, in addition to the broker fee set forth in subdivision (a)
18 of Section 10210.

19 (b) A real estate broker who fails to notify the department
20 pursuant to subdivision (a) shall be assessed a penalty of fifty
21 dollars (\$50) per day for each day written notification has not been
22 received, up to and including the 30th day after the first day of the
23 assessment penalty. On and after the 31st day, the penalty is one
24 hundred dollars (\$100) per day, not to exceed a total penalty of
25 ten thousand dollars (\$10,000), regardless of the number of days,
26 until the department receives the written notification.

27 (c) The commissioner may suspend or revoke the license of a
28 real estate broker who fails to pay a penalty imposed pursuant to
29 this section. In addition, the commissioner may bring an action in
30 an appropriate court of this state to collect payment of that penalty.

31 (d) All penalties paid or collected under this section shall be
32 deposited into the Recovery Account of the Real Estate Fund and
33 shall, upon appropriation by the Legislature, be available for
34 expenditure for the purposes specified in Chapter 6.5 (commencing
35 with Section 10470).

36 SEC. 3. Section 10131.91 is added to the Business and
37 Professions Code, to read:

38 10131.91. (a) A real estate broker who acts pursuant to Section
39 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
40 arranges, or services loans secured by real property containing one

1 to four residential units, shall annually file with the department all
2 of the following reports, as applicable, and a fee of six hundred
3 dollars (\$600) to cover the cost to the department for reviewing
4 the reports and for the regulation of brokers, within 90 days after
5 the end of the broker's fiscal year or within any additional time as
6 the commissioner may allow for filing for good cause:

7 (1) The report of a compliance review by a licensed California
8 independent public accountant, which shall be submitted for every
9 broker's license under which a residential mortgage loan is made,
10 arranged, or serviced during the fiscal year. The compliance review
11 shall provide an independent evaluation of whether the activities
12 conducted under the license were performed in accordance with
13 applicable laws and regulations.

14 (2) If the broker establishes one or more trust fund accounts
15 with an aggregate value of at least two hundred fifty thousand
16 dollars (\$250,000) during the course of the fiscal year pursuant to
17 Section 10145, the report of a review by a licensed California
18 independent public accountant of trust fund financial statements,
19 conducted in accordance with generally accepted accounting
20 practices, shall include within its scope the following information
21 for the fiscal year relative to the business activities of the broker:

22 (A) The receipt and disposition of all funds of others to be
23 applied to the making of loans and the purchasing of promissory
24 notes or real property sales contracts.

25 (B) The receipt and disposition of all funds of others in
26 connection with the servicing by the broker of the accounts of
27 owners of promissory notes and real property sales contracts
28 including installment payments and loan or contract payoffs by
29 obligors.

30 (C) A statement, as of the end of the fiscal year, which shall
31 include an itemized trust fund accounting of the broker and
32 confirmation that the trust funds are on deposit in an account, or
33 accounts, maintained by the broker at a financial institution.

34 (3) A business activities report, which shall include within its
35 scope, at a minimum, all of the following information for the fiscal
36 year relative to the business activities of the broker and those of
37 any other brokers and real estate salespersons acting under that
38 broker's supervision:

39 (A) The names and license numbers of the real estate brokers
40 and real estate salespersons acting under the broker's supervision.

1 (B) The numbers and types of loans brokered or made, the
2 aggregate dollar values of each type of loan, the range of interest
3 rates charged on the loans, the lenders of record on the loans, and
4 the dispositions of the loans, if known.

5 (C) The number and aggregate dollar amounts of late payment
6 charges, prepayment penalties, and other fees or charges collected
7 and retained by the broker while acting in a lending or servicing
8 capacity.

9 (D) Default and foreclosure experience in connection with loans
10 brokered, serviced, or made by the broker.

11 (E) Commissions received by the broker for services performed
12 as an agent in negotiating loans and sales of promissory notes and
13 real property sales contracts.

14 (F) Aggregate costs and expenses, as referred to in Section
15 10241, paid by borrowers to the broker.

16 (b) The commissioner shall adopt regulations prescribing the
17 form and content of the reports described in subdivision (a) with
18 appropriate categories to provide a better understanding of the
19 business conducted by the broker.

20 (c) A broker subject to this section and Section 10232.2 may
21 file consolidated reports that include all of the information required
22 under this section and Section 10232.2. Those consolidated reports
23 shall clearly indicate that they are intended to satisfy the
24 requirements of both sections.

25 (d) If a broker subject to this section fails to timely file the
26 reports required under this section, the commissioner may cause
27 an examination and report to be made and may charge the broker
28 one and one-half times the cost of making the examination and
29 report. In determining the hourly cost incurred by the commissioner
30 for conducting an examination and preparing the report, the
31 commissioner may use the estimated average hourly cost for all
32 department audit staff performing audits of real estate brokers. If
33 a broker fails to pay the above amount within 60 days of the
34 mailing of a notice of billing, the commissioner may suspend the
35 broker's license or deny renewal of that license. The suspension
36 or denial shall remain in effect until the above amount is paid or
37 the broker's right to renew a license has expired. The commissioner
38 may maintain an action for the recovery of the above amount in
39 any court of competent jurisdiction.

1 (e) The reports described in this section are exempted from any
2 requirement of public disclosure by paragraph (2) of subdivision
3 (d) of Section 6254 of the Government Code. The commissioner
4 shall annually make and file as a public record a composite of the
5 annual reports and any comments thereon that are deemed to be
6 in the public interest.

7 SEC. 4. Section 10150.1 is added to the Business and
8 Professions Code, to read:

9 10150.1. (a) Any real estate broker who acts pursuant to
10 Section 10131.1 or subdivision (d) or (e) of Section 10131, and
11 who makes, arranges, or services loans secured by real property
12 containing one to four residential units, shall maintain a surety
13 bond in accordance with this section. The principal amount of the
14 bond shall be in an amount and form prescribed by regulations of
15 the commissioner. The regulations shall provide for a varying bond
16 amount based upon a licensee's volume of business as a real estate
17 broker that negotiates loans as a mortgage broker and any other
18 relevant factors as determined by the commissioner, but in no case
19 shall the bond be less than one hundred thousand dollars (\$100,000)
20 nor more than five hundred thousand dollars (\$500,000); provided,
21 however, that upon a determination by the commissioner that the
22 licensee is not in compliance with any provision of this chapter,
23 or Division 1.6 (commencing with Section 4970) of the Financial
24 Code, or any rule or order adopted or issued to implement or
25 enforce any of these provisions, the commissioner may require the
26 licensee to post a surety bond twice the amount of the bond as is
27 required consistent with the regulations. The bond shall be payable
28 to the commissioner and issued by an insurer authorized to do
29 business in this state. A copy of the bond, including any and all
30 riders and endorsements executed subsequent to the effective date
31 of the bond, shall be filed with the commissioner for review and
32 approval prior to execution, and filed with the commissioner within
33 10 days of execution. For licensees with multiple licensed
34 locations, only one surety bond is required.

35 (b) The bond required under this section shall be used for the
36 recovery of expenses, fines, and fees levied by the commissioner
37 in accordance with this division or for losses or damages incurred
38 by borrowers or consumers as the result of a licensee's
39 noncompliance with the requirements of this chapter or Division
40 1.6 (commencing with Section 4970) of the Financial Code.

1 SEC. 5. Section 10156.8 of the Business and Professions Code
2 is amended to read:

3 10156.8. As one of the conditions to the issuance of a restricted
4 license authorized by Section 10156.5 the commissioner may
5 require the filing of surety bonds in such form and condition as he
6 may require in respect to the restricted licensee for the protection
7 of persons or classes of persons with whom said licensee may deal.
8 *With respect to a licensee who acts pursuant to Section 10131.1*
9 *or subdivision (d) or (e) of Section 10131, and who makes,*
10 *arranges, or services loans secured by real property containing*
11 *one to four residential units, the commissioner shall require, as*
12 *one of the conditions to the issuance of a restricted license, the*
13 *filing of a surety bond in an amount no less than two hundred fifty*
14 *thousand dollars (\$250,000).*

15 SEC. 6. Section 10248.7 is added to the Business and
16 Professions Code, to read:

17 10248.7. (a) For purposes of this section, the following
18 definitions shall apply:

19 (1) “Broker” means a real estate broker that makes, arranges,
20 or services consumer loans.

21 (2) “Consumer loan” has the meaning set forth in Section 4970
22 of the Financial Code.

23 (b) A broker who provides brokerage services to a borrower in
24 connection with a consumer loan by soliciting lenders or otherwise
25 negotiating a consumer loan is the fiduciary of the borrower, and
26 any violation of the person’s fiduciary duties shall be a violation
27 of this section. A broker who arranges a consumer loan owes this
28 fiduciary duty to the borrower regardless of whether the broker
29 may be acting for anyone else as an agent in the course of the loan
30 transaction.

31 (c) In addition to duties imposed by other statutes or at common
32 law, a broker shall comply with all of the following duties, which
33 may not be waived by the borrower or modified by the broker:

34 (1) A broker shall act in the borrower’s best interest and in the
35 utmost good faith toward the borrower and shall not compromise
36 a borrower’s right or interest in favor of another’s right or interest,
37 including, but not limited to, a right or interest of the broker.

38 (2) A broker shall safeguard and account for any money handled
39 for the borrower.

1 (3) A broker shall follow reasonable and lawful instructions
2 from the borrower.

3 (4) A broker shall use reasonable skill, care, and diligence.

4 (5) A broker shall clearly disclose to the borrower, in a timely
5 fashion, all material information that might reasonably affect the
6 borrower's rights, interests, or ability to receive the borrower's
7 intended benefit from the consumer loan, including, but not limited
8 to, total compensation the broker would receive from any of the
9 loan options the broker presents to the borrower.

10 (6) A broker shall make reasonable efforts to secure a loan that
11 is in the best interests of the borrower considering all the
12 circumstances, including, but not limited to, the product type, rates,
13 charges, and repayment terms of the consumer loan.

14 (7) A broker shall not make or cause to be made, directly or
15 indirectly, any false, deceptive, or misleading statement,
16 representation, or omission in connection with a consumer loan.

17 (8) A broker shall not accept, give, or charge any undisclosed
18 compensation or realize any undisclosed remuneration, whether
19 through direct or indirect means, that inures to the benefit of the
20 broker on an expenditure made for the borrower.

21 (d) (1) A broker shall not steer, counsel, or direct a borrower
22 to a consumer loan with rates, charges, principal amount, or
23 prepayment terms that are more costly than that for which the
24 borrower qualifies.

25 (2) If unable to suggest, offer, or recommend to a borrower a
26 consumer loan that is not more expensive than that for which the
27 consumer qualifies, a broker shall disclose both of the following
28 to the consumer:

29 (A) That the lenders with whom the broker has a business
30 relationship do not offer a consumer loan that is not more expensive
31 than that for which the borrower qualifies, but that other creditors
32 may offer such a loan.

33 (B) The reasons that the products and services offered by the
34 lenders with whom the broker has a business relationship are not
35 available to, or reasonably advantageous for, the borrower.

36 (e) (1) A broker shall not receive, directly or indirectly, any
37 compensation for placing a borrower in a consumer loan that is
38 more costly than that for which the borrower qualifies, or that is
39 based on, or varies with, the terms of any home mortgage loan,
40 other than the amount of loan principal.

1 (2) Notwithstanding paragraph (1), in a consumer loan other
 2 than a high-cost loan, a subprime loan, or a nontraditional loan, a
 3 broker may receive compensation in the form of an increased rate
 4 not to exceed 100 basis points above the par rate for which the
 5 borrower qualifies, provided all of the following are satisfied:

6 (A) The broker receives no other compensation, however
 7 denominated, directly or indirectly, from the borrower, creditor,
 8 or other mortgage originator.

9 (B) The loan does not include discount points, origination points,
 10 or rate reduction points, however denominated, or any payment
 11 reduction fee, however denominated.

12 (C) The loan does not include a prepayment penalty.

13 (D) There are no other closing costs associated with the loan,
 14 except for fees to government officials or amounts to fund escrow
 15 accounts for taxes and insurance.

16 (f) For a period of one year from the consummation of a
 17 consumer loan that was negotiated or arranged by a broker, that
 18 broker shall not engage in direct marketing or initiate any
 19 communication with the borrower regarding refinancing. “Direct
 20 marketing” and “communication” shall include any communication
 21 directed at a specific person without the use of intervening media,
 22 including, but not limited to, the following methods: telephone,
 23 electronic mail, United States mail or other form of courier service,
 24 and in-person communication. This subdivision shall not restrict
 25 a broker from responding to specific customer inquiries regarding
 26 refinancing.

27 (g) A broker who fails to comply with the provisions of this
 28 section shall be civilly liable to the consumer in an amount equal
 29 to any actual damages suffered by the consumer, plus attorneys
 30 fees and costs. A court may, in addition to any other remedy, award
 31 punitive damages to the consumer upon a finding that damages
 32 are warranted pursuant to Section 3294 of the Civil Code.

33 SEC. 7. Section 22104 of the Financial Code is amended to
 34 read:

35 22104. The applicant shall file with the application financial
 36 statements prepared in accordance with generally accepted
 37 accounting principles and acceptable to the commissioner that
 38 indicate a net worth of at least ~~twenty-five thousand dollars~~
 39 *(fifty thousand dollars (\$50,000))*. A licensee shall

1 maintain a net worth of at least ~~twenty-five thousand dollars~~
2 ~~(\$25,000)~~ *fifty thousand dollars (\$50,000)* at all times.

3 SEC. 8. Section 22112 of the Financial Code is amended to
4 read:

5 22112. (a) ~~A licensee~~ *finance lender licensed under this*
6 *division shall maintain a surety bond in accordance with this*
7 *subdivision in the amount of twenty-five thousand dollars*
8 *(\$25,000). ~~The bond shall~~*

9 *(b) A broker licensed under this division that makes, arranges,*
10 *or services consumer loans, as defined in Section 4970, shall*
11 *maintain a surety bond in an amount and form prescribed by*
12 *regulations of the commissioner. The regulations shall provide*
13 *for a varying bond amount based upon a licensee's volume of*
14 *business and any other relevant factors as determined by the*
15 *commissioner, but in no case shall the bond be less than one*
16 *hundred thousand dollars (\$100,000) nor more than five hundred*
17 *thousand dollars (\$500,000); provided, however, that upon a*
18 *determination by the commissioner that the licensee is not in*
19 *compliance with any provision of this division, or Division 1.6*
20 *(commencing with Section 4970), or any rule or order adopted or*
21 *issued to implement or enforce any of these provisions, the*
22 *commissioner may require the licensee to post a surety bond twice*
23 *the amount of the bond as is required consistent with the*
24 *regulations.*

25 *(c) The bonds required under subdivisions (a) and (b) shall be*
26 *payable to the commissioner and issued by an insurer authorized*
27 *to do business in this state. An original surety bond, including any*
28 *and all riders and endorsements executed subsequent to the*
29 *effective date of the bond, shall be filed with the commissioner*
30 *within 10 days of execution. For licensees with multiple licensed*
31 *locations, only one surety bond is required. The bond shall be used*
32 *for the recovery of expenses, fines, and fees levied by the*
33 *commissioner in accordance with this division or for losses or*
34 *damages incurred by borrowers or consumers as the result of a*
35 *licensee's noncompliance with the requirements of this division,*
36 *or Division 1.6 (commencing with Section 4970).*

37 ~~(b)~~

38 *(d) When an action is commenced on a licensee's bond, the*
39 *commissioner may require the filing of a new bond. Immediately*
40 *upon recovery of any action on the bond, the licensee shall file a*

1 new bond. Failure to file a new bond within 10 days of the recovery
2 on a bond, or within 10 days after notification by the commissioner
3 that a new bond is required, constitutes sufficient grounds for the
4 suspension or revocation of the license.

5 SEC. 9. Section 22168 is added to the Financial Code, to read:

6 22168. (a) For purposes of this section, the following
7 definitions shall apply:

8 (1) “Broker” means any licensee that makes, arranges, or
9 services consumer loans.

10 (2) “Consumer loan” has the meaning set forth in Section 4970.

11 (b) A broker who provides brokerage services to a borrower in
12 connection with a consumer loan by soliciting lenders or otherwise
13 negotiating a consumer loan is the fiduciary of the borrower, and
14 any violation of the person’s fiduciary duties shall be a violation
15 of this section. A broker who arranges a consumer loan owes this
16 fiduciary duty to the borrower regardless of whether the broker
17 may be acting for anyone else as an agent in the course of the loan
18 transaction.

19 (c) In addition to duties imposed by other statutes or at common
20 law, a broker shall comply with all of the following duties, which
21 may not be waived by the borrower or modified by the broker:

22 (1) A broker shall act in the borrower’s best interest and in the
23 utmost good faith toward the borrower and shall not compromise
24 a borrower’s right or interest in favor of another’s right or interest,
25 including, but not limited, to a right or interest of the broker.

26 (2) A broker shall safeguard and account for any money handled
27 for the borrower.

28 (3) A broker shall follow reasonable and lawful instructions
29 from the borrower.

30 (4) A broker shall use reasonable skill, care, and diligence.

31 (5) A broker shall clearly disclose to the borrower, in a timely
32 fashion, all material information that might reasonably affect the
33 borrower’s rights, interests, or ability to receive the borrower’s
34 intended benefit from the consumer loan, including, but not limited
35 to, total compensation the broker would receive from any of the
36 loan options the broker presents to the borrower.

37 (6) A broker shall make reasonable efforts to secure a loan that
38 is in the best interests of the borrower considering all the
39 circumstances, including, but not limited to, the product type, rates,
40 charges, and repayment terms of the consumer loan.

1 (7) A broker shall not make or cause to be made, directly or
2 indirectly, any false, deceptive, or misleading statement,
3 representation, or omission in connection with a consumer loan.

4 (8) A broker shall not accept, give, or charge any undisclosed
5 compensation or realize any undisclosed remuneration, whether
6 through direct or indirect means, that inures to the benefit of the
7 broker on an expenditure made for the borrower.

8 (d) (1) A broker shall not steer, counsel, or direct a borrower
9 to a consumer loan with rates, charges, principal amount, or
10 prepayment terms that are more costly than that for which the
11 borrower qualifies.

12 (2) If unable to suggest, offer, or recommend to a borrower a
13 consumer loan that is not more expensive than that for which the
14 consumer qualifies, a broker shall disclose both of the following
15 to the consumer:

16 (A) That the lenders with whom the broker has a business
17 relationship do not offer a consumer loan that is not more expensive
18 than that for which the borrower qualifies, but that other creditors
19 may offer such a loan.

20 (B) The reasons that the products and services offered by the
21 lenders with whom the broker has a business relationship are not
22 available to, or reasonably advantageous for, the borrower.

23 (e) (1) A broker shall not receive, directly or indirectly, any
24 compensation for placing a borrower in a consumer loan that is
25 more costly than that for which the borrower qualifies, or that is
26 based on, or varies with, the terms of any home mortgage loan,
27 other than the amount of loan principal.

28 (2) Notwithstanding paragraph (1), in a consumer loan other
29 than a high-cost loan, a subprime loan, or a nontraditional loan, a
30 broker may receive compensation in the form of an increased rate
31 not to exceed 100 basis points above the par rate for which the
32 borrower qualifies, provided all of the following are satisfied:

33 (A) The broker receives no other compensation, however
34 denominated, directly or indirectly, from the borrower, creditor,
35 or other mortgage originator.

36 (B) The loan does not include discount points, origination points,
37 or rate reduction points, however denominated, or any payment
38 reduction fee, however denominated.

39 (C) The loan does not include a prepayment penalty.

1 (D) There are no other closing costs associated with the loan,
 2 except for fees to government officials or amounts to fund escrow
 3 accounts for taxes and insurance.

4 (f) For a period of one year from the consummation of a
 5 consumer loan that was negotiated or arranged by a broker, that
 6 broker shall not engage in direct marketing or initiate any
 7 communication with the borrower regarding refinancing. “Direct
 8 marketing” and “communication” shall include any communication
 9 directed at a specific person without the use of intervening media,
 10 including, but not limited to, the following methods: telephone,
 11 electronic mail, United States mail or other form of courier service,
 12 and in-person communication. This subdivision shall not restrict
 13 a broker from responding to specific customer inquiries regarding
 14 refinancing.

15 (g) A broker who fails to comply with the provisions of this
 16 section shall be civilly liable to the consumer in an amount equal
 17 to any actual damages suffered by the consumer, plus attorneys
 18 fees and costs. A court may, in addition to any other remedy, award
 19 punitive damages to the consumer upon a finding that damages
 20 are warranted pursuant to Section 3294 of the Civil Code.

21 SEC. 10. Section 23006 of the Financial Code is amended to
 22 read:

23 23006. At the time of filing the application, the applicant shall
 24 pay to the commissioner the sum of ~~one hundred dollars (\$100)~~
 25 *two hundred fifty dollars (\$250)* as a fee for investigating the
 26 application, the sum of ~~two hundred dollars (\$200)~~ *seven hundred*
 27 *fifty dollars (\$750)* as an application fee, and the cost of fingerprint
 28 processing. *The licensee shall also pay an annual renewal fee of*
 29 *six hundred dollars (\$600).* The investigation fee and application
 30 fee are not refundable if an application is denied or withdrawn.

31 SEC. 11. Section 50121 of the Financial Code is amended to
 32 read:

33 50121. The commissioner shall issue a license upon the
 34 satisfaction of all of the following:

35 (a) The filing with the commissioner of a complete and verified
 36 application for licensure.

37 (b) The filing as an exhibit to the application of a listing of
 38 material judgments filed against, and bankruptcy petitions filed
 39 by, the applicant for the preceding five years, and the disposition
 40 thereof.

1 (c) The payment of a nonrefundable investigation fee of ~~one~~
2 ~~hundred dollars (\$100)~~ *two hundred fifty dollars (\$250)*, plus the
3 cost of fingerprint processing and clearance, and an application
4 filing fee of nine hundred dollars (\$900).

5 (d) An investigation of the statements required by Section 50124
6 based upon which the commissioner is able to issue findings that
7 the financial responsibility, criminal records (verified by
8 fingerprint, at the discretion of the commissioner), experience,
9 character, and general fitness of the applicant and of the partners
10 or members thereof, if the applicant is a partnership or association,
11 and of the principal officers and directors thereof, if the license
12 applicant is a corporation, support a finding that the business will
13 be operated honestly, fairly, and in accordance with the
14 requirements of this division.

15 SEC. 12. Section 50205 of the Financial Code is amended to
16 read:

17 50205. (a) A licensee shall maintain a surety bond in
18 accordance with this subdivision. The bond shall be used for the
19 recovery of expenses, fines, and fees levied by the commissioner
20 in accordance with this division or for losses or damages incurred
21 by borrowers or consumers as the result of a licensee's
22 noncompliance with the requirements of this division. ~~The~~ *Except*
23 *as specified in subdivision (b), the* bond shall be payable when the
24 licensee fails to comply with a provision of this division and shall
25 be in the amount of fifty thousand dollars (\$50,000), and may be
26 increased by order of the commissioner to one hundred thousand
27 dollars (\$100,000) upon a determination by the commissioner that
28 the licensee is not in compliance with any provision of this chapter
29 or any rule or order adopted or issued by the commissioner to
30 implement or enforce provisions of this chapter. ~~The bond~~

31 (b) *Any licensee who provides brokerage services pursuant to*
32 *Chapter 9 (commencing with Section 50700) shall maintain a*
33 *surety bond in an amount prescribed by regulations of the*
34 *commissioner. The regulations shall provide for a varying bond*
35 *amount based upon a licensee's volume of business and any other*
36 *relevant factors as determined by the commissioner, but in no case*
37 *shall the bond be less than one hundred thousand dollars*
38 *(\$100,000) nor more than five hundred thousand dollars*
39 *(\$500,000); provided, however, that upon a determination by the*
40 *commissioner that the licensee is not in compliance with any*

1 *provision of this division, or Division 1.6 (commencing with Section*
 2 *4970), or any rule or order adopted or issued to implement or*
 3 *enforce any of these provisions, the commissioner may require the*
 4 *licensee to post a surety bond twice the amount of the bond as is*
 5 *required consistent with the regulations.*

6 (c) *The bonds required under subdivisions (a) and (b) shall be*
 7 *payable to the commissioner and issued by an insurance company*
 8 *authorized to do business in this state. An original surety bond,*
 9 *including any and all riders and endorsements executed subsequent*
 10 *to the effective date of the bond, shall be filed with the*
 11 *commissioner within 10 days of its execution.*

12 ~~(b)~~
 13 (d) *When an action is commenced on a licensee’s bond, the*
 14 *commissioner may require the filing of a new bond. Immediately*
 15 *upon the recovery of an action on the bond, the licensee shall file*
 16 *a new bond. Failure to file a new bond within 10 days of the*
 17 *recovery on a bond, or within 10 days after notification by the*
 18 *commissioner that a new bond is required, constitutes sufficient*
 19 *grounds for the suspension or revocation of the license.*

20 SEC. 13. Section 50513 is added to the Financial Code, to read:

21 50513. (a) For purposes of this section, the following
 22 definitions shall apply:

23 (1) “Broker” means any licensee that makes, arranges, or
 24 services consumer loans.

25 (2) “Consumer loan” has the meaning set forth in Section 4970.

26 (b) A broker who provides brokerage services to a borrower in
 27 connection with a consumer loan by soliciting lenders or otherwise
 28 negotiating a consumer loan is the fiduciary of the borrower, and
 29 any violation of the person’s fiduciary duties shall be a violation
 30 of this section. A broker who arranges a consumer loan owes this
 31 fiduciary duty to the borrower regardless of whether the broker
 32 may be acting for anyone else as an agent in the course of the loan
 33 transaction.

34 (c) In addition to duties imposed by other statutes or at common
 35 law, a broker shall comply with all of the following duties, which
 36 may not be waived by the borrower or modified by the broker:

37 (1) A broker shall act in the borrower’s best interest and in the
 38 utmost good faith toward the borrower and shall not compromise
 39 a borrower’s right or interest in favor of another’s right or interest,
 40 including, but not limited to, a right or interest of the broker.

1 (2) A broker shall safeguard and account for any money handled
2 for the borrower.

3 (3) A broker shall follow reasonable and lawful instructions
4 from the borrower.

5 (4) A broker shall use reasonable skill, care, and diligence.

6 (5) A broker shall clearly disclose to the borrower, in a timely
7 fashion, all material information that might reasonably affect the
8 borrower's rights, interests, or ability to receive the borrower's
9 intended benefit from the consumer loan, including, but not limited
10 to, total compensation the broker would receive from any of the
11 loan options the broker presents to the borrower.

12 (6) A broker shall make reasonable efforts to secure a loan that
13 is in the best interests of the borrower considering all the
14 circumstances, including, but not limited to, the product type, rates,
15 charges, and repayment terms of the consumer loan.

16 (7) A broker shall not make or cause to be made, directly or
17 indirectly, any false, deceptive, or misleading statement,
18 representation, or omission in connection with a consumer loan.

19 (8) A broker shall not accept, give, or charge any undisclosed
20 compensation or realize any undisclosed remuneration, whether
21 through direct or indirect means, that inures to the benefit of the
22 broker on an expenditure made for the borrower.

23 (d) (1) A broker shall not steer, counsel, or direct a borrower
24 to a consumer loan with rates, charges, principal amount, or
25 prepayment terms that are more costly than that for which the
26 borrower qualifies.

27 (2) If unable to suggest, offer, or recommend to a borrower a
28 consumer loan that is not more expensive than that for which the
29 consumer qualifies, a broker shall disclose both of the following
30 to the consumer:

31 (A) That the lenders with whom the broker has a business
32 relationship do not offer a consumer loan that is not more expensive
33 than that for which the borrower qualifies, but that other creditors
34 may offer such a loan.

35 (B) The reasons that the products and services offered by the
36 lenders with whom the broker has a business relationship are not
37 available to, or reasonably advantageous for, the borrower.

38 (e) (1) A broker shall not receive, directly or indirectly, any
39 compensation for placing a borrower in a consumer loan that is
40 more costly than that for which the borrower qualifies, or that is

1 based on, or varies with, the terms of any home mortgage loan,
 2 other than the amount of loan principal.

3 (2) Notwithstanding paragraph (1), in a consumer loan other
 4 than a high-cost loan, a subprime loan, or a nontraditional loan, a
 5 broker may receive compensation in the form of an increased rate
 6 not to exceed 100 basis points above the par rate for which the
 7 borrower qualifies, provided all of the following are satisfied:

8 (A) The broker receives no other compensation, however
 9 denominated, directly or indirectly, from the borrower, creditor,
 10 or other mortgage originator.

11 (B) The loan does not include discount points, origination points,
 12 or rate reduction points, however denominated, or any payment
 13 reduction fee, however denominated.

14 (C) The loan does not include a prepayment penalty.

15 (D) There are no other closing costs associated with the loan,
 16 except for fees to government officials or amounts to fund escrow
 17 accounts for taxes and insurance.

18 (f) For a period of one year from the consummation of a
 19 consumer loan that was negotiated or arranged by a broker, that
 20 broker shall not engage in direct marketing or initiate any
 21 communication with the borrower regarding refinancing. “Direct
 22 marketing” and “communication” shall include any communication
 23 directed at a specific person without the use of intervening media,
 24 including, but not limited to, the following methods: telephone,
 25 electronic mail, United States mail or other form of courier service,
 26 and in-person communication. This subdivision shall not restrict
 27 a mortgage broker from responding to specific customer inquiries
 28 regarding refinancing.

29 (g) A broker who fails to comply with the provisions of this
 30 section shall be civilly liable to the consumer in an amount equal
 31 to any actual damages suffered by the consumer, plus attorneys
 32 fees and costs. A court may, in addition to any other remedy, award
 33 punitive damages to the consumer upon a finding that damages
 34 are warranted pursuant to Section 3294 of the Civil Code.

35 SEC. 14. No reimbursement is required by this act pursuant to
 36 Section 6 of Article XIII B of the California Constitution because
 37 the only costs that may be incurred by a local agency or school
 38 district will be incurred because this act creates a new crime or
 39 infraction, eliminates a crime or infraction, or changes the penalty
 40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within
2 the meaning of Section 6 of Article XIII B of the California
3 Constitution.

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