

AMENDED IN ASSEMBLY APRIL 1, 2008  
AMENDED IN ASSEMBLY MARCH 24, 2008  
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2880**

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

February 22, 2008

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An act to amend Section 10156.8 of, and to add Sections 10133.25 and 10150.1 to, the Business and Professions Code, and to amend Sections 22103, 22104, 22112, ~~23006~~, 50121, and 50205 of, and to add Sections 22004.5, 22168, 50003.5, and 50513 to, the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 2880, as amended, 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. A willful violation of the law regulating these licensees is a crime.

This bill would require a real estate broker who makes, arranges, or services loans secured by real property to maintain a surety bond with the commissioner, as specified. The bill would provide that a mortgage broker, as defined, who provides brokerage services to a borrower is

the fiduciary of the borrower. The bill would create various duties that these mortgage brokers would be required to satisfy when making, arranging, or servicing consumer loans, as defined. The bill would prohibit mortgage 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 mortgage 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 mortgage broker who 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 ~~deferred deposit transaction licensees~~ *finance lenders* and residential mortgage lenders are required to pay to, and the amounts of the surety bonds mortgage brokers, as defined, 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: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 10133.25 is added to the Business and
- 2 Professions Code, to read:
- 3 10133.25. (a) For purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) "Mortgage broker" means a real estate broker who acts
- 6 pursuant to Section 10131.1 or subdivision (d) of Section 10131,
- 7 and who makes, arranges, or services consumer loans.
- 8 (2) "Consumer loan" has the meaning set forth in Section 4970
- 9 of the Financial Code.

1 (b) A mortgage broker who provides brokerage services to a  
2 borrower is the fiduciary of the borrower, and any violation of the  
3 person’s fiduciary duties shall be a violation of this section. A  
4 mortgage broker who arranges a consumer loan owes this fiduciary  
5 duty to the borrower regardless of whether the mortgage broker  
6 may be acting for anyone else as an agent in the course of the loan  
7 transaction.

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

12 (1) A mortgage broker shall act in the borrower’s best interest  
13 and in the utmost good faith toward the borrower and shall not  
14 compromise a borrower’s right or interest in favor of another’s  
15 right or interest, including, but not limited to, a right or interest of  
16 the mortgage broker.

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

19 (3) A mortgage broker shall follow reasonable and lawful  
20 instructions from the borrower.

21 (4) A mortgage broker shall use reasonable skill, care, and  
22 diligence.

23 (5) A mortgage broker shall clearly disclose to the borrower, in  
24 a timely fashion, all material information that might reasonably  
25 affect the borrower’s rights, interests, or ability to receive the  
26 borrower’s intended benefit from the consumer loan, including,  
27 but not limited to, total compensation the mortgage broker would  
28 receive from any of the loan options the mortgage broker presents  
29 to the borrower.

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

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

37 (8) A mortgage broker shall not accept, give, or charge any  
38 undisclosed compensation or realize any undisclosed remuneration,  
39 whether through direct or indirect means, that inures to the benefit  
40 of the mortgage broker on an expenditure made for the borrower.

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

5 (2) If unable to suggest, offer, or recommend to a borrower a  
6 consumer loan that is not more expensive than that for which the  
7 consumer qualifies, a mortgage broker shall disclose both of the  
8 following to the consumer:

9 (A) That the lenders with whom the mortgage broker has a  
10 business relationship do not offer a consumer loan that is not more  
11 expensive than that for which the borrower qualifies, but that other  
12 creditors may offer such a loan.

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

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

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

27 (A) The mortgage broker receives no other compensation,  
28 however denominated, directly or indirectly, from the borrower,  
29 creditor, or other mortgage originator.

30 (B) The loan does not include discount points, origination points,  
31 or rate reduction points, however denominated, or any payment  
32 reduction fee, however denominated.

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

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

37 (f) For a period of one year from the consummation of a  
38 consumer loan that was negotiated or arranged by a mortgage  
39 broker, that mortgage broker shall not engage in direct marketing  
40 or initiate any communication with the borrower regarding

1 refinancing of that consumer loan. “Direct marketing” and  
2 “communication” shall include any communication directed at a  
3 specific person without the use of intervening media, including,  
4 but not limited to, the following methods: telephone, electronic  
5 mail, United States mail or other form of courier service, and  
6 in-person communication. This subdivision shall not restrict a  
7 broker from responding to specific customer inquiries regarding  
8 refinancing.

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

16 (h) *The duties, rights, and remedies provided in this section are*  
17 *cumulative and in addition to any other duties, rights, and remedies*  
18 *provided by law.*

19 SEC. 2. Section 10150.1 is added to the Business and  
20 Professions Code, to read:

21 10150.1. (a) Any real estate broker who acts pursuant to  
22 Section 10131.1 or subdivision (d) or (e) of Section 10131, and  
23 who makes, arranges, or services loans secured by real property  
24 containing one to four residential units, shall maintain a surety  
25 bond in accordance with this section. The principal amount of the  
26 bond shall be in an amount and form prescribed by regulations of  
27 the commissioner. The regulations shall provide for a varying bond  
28 amount based upon a licensee’s volume of business as a real estate  
29 broker that negotiates loans as a mortgage broker and any other  
30 relevant factors as determined by the commissioner, but in no case  
31 shall the bond be less than one hundred thousand dollars (\$100,000)  
32 nor more than five hundred thousand dollars (\$500,000); provided,  
33 however, that upon a determination by the commissioner that the  
34 licensee is not in compliance with any provision of this chapter,  
35 or Division 1.6 (commencing with Section 4970) of the Financial  
36 Code, or any rule or order adopted or issued to implement or  
37 enforce any of these provisions, the commissioner may require the  
38 licensee to post a surety bond twice the amount of the bond as is  
39 required consistent with the regulations. The bond shall be payable  
40 to the commissioner and issued by an insurer authorized to do

1 business in this state. A copy of the bond, including any and all  
 2 riders and endorsements executed subsequent to the effective date  
 3 of the bond, shall be filed with the commissioner for review and  
 4 approval prior to execution, and filed with the commissioner within  
 5 10 days of execution. For licensees with multiple licensed  
 6 locations, only one surety bond is required.

7 (b) The bond required under this section shall be used for the  
 8 recovery of expenses, fines, and fees levied by the commissioner  
 9 in accordance with this division or for losses or damages incurred  
 10 by borrowers or consumers as the result of a licensee's  
 11 noncompliance with the requirements of this chapter or Division  
 12 1.6 (commencing with Section 4970) of the Financial Code.

13 SEC. 3. Section 10156.8 of the Business and Professions Code  
 14 is amended to read:

15 10156.8. As one of the conditions to the issuance of a restricted  
 16 license authorized by Section 10156.5 the commissioner may  
 17 require the filing of surety bonds in such form and condition as he  
 18 may require in respect to the restricted licensee for the protection  
 19 of persons or classes of persons with whom said licensee may deal.  
 20 With respect to a licensee who acts pursuant to Section 10131.1  
 21 or subdivision (d) or (e) of Section 10131, and who makes,  
 22 arranges, or services loans secured by real property containing one  
 23 to four residential units, the commissioner shall require, as one of  
 24 the conditions to the issuance of a restricted license, the filing of  
 25 a surety bond in an amount no less than two hundred fifty thousand  
 26 dollars (\$250,000).

27 SEC. 4. Section 22004.5 is added to the Financial Code, to  
 28 read:

29 22004.5. For purposes of this division, "mortgage broker"  
 30 means a licensee who engages in the business of negotiating  
 31 consumer loans, as defined in Section 4970, or who performs any  
 32 act as a negotiator in connection with those consumer loans made  
 33 by a finance lender licensed under this division.

34 SEC. 5. Section 22103 of the Financial Code is amended to  
 35 read:

36 22103. At the time of filing the application, the applicant shall  
 37 pay to the commissioner the sum of ~~one hundred dollars (\$100)~~  
 38 *two hundred fifty dollars (\$250)* as a fee for investigating the  
 39 application, plus the cost of fingerprint processing and the criminal  
 40 history record check under Section 22101.5, and ~~two hundred~~

1 ~~dollars (\$200)~~ *seven hundred fifty dollars (\$750)* as an application  
2 fee. *The licensee shall also pay an annual renewal fee of six*  
3 *hundred dollars (\$600).* The investigation fee, including the amount  
4 for the criminal history record check, and the application fee are  
5 not refundable if an application is denied or withdrawn.

6 ~~SEC. 5.~~

7 SEC. 6. Section 22104 of the Financial Code is amended to  
8 read:

9 22104. The applicant shall file with the application financial  
10 statements prepared in accordance with generally accepted  
11 accounting principles and acceptable to the commissioner that  
12 indicate a net worth of at least fifty thousand dollars (\$50,000). A  
13 licensee shall maintain a net worth of at least fifty thousand dollars  
14 (\$50,000) at all times.

15 ~~SEC. 6.~~

16 SEC. 7. Section 22112 of the Financial Code is amended to  
17 read:

18 22112. (a) A finance lender licensed under this division shall  
19 maintain a surety bond in accordance with this subdivision in the  
20 amount of twenty-five thousand dollars (\$25,000).

21 (b) A mortgage broker licensed under this division shall maintain  
22 a surety bond in an amount and form prescribed by regulations of  
23 the commissioner. The regulations shall provide for a varying bond  
24 amount based upon a licensee's volume of business and any other  
25 relevant factors as determined by the commissioner, but in no case  
26 shall the bond be less than one hundred thousand dollars (\$100,000)  
27 nor more than five hundred thousand dollars (\$500,000); provided,  
28 however, that upon a determination by the commissioner that the  
29 licensee is not in compliance with any provision of this division,  
30 or Division 1.6 (commencing with Section 4970), or any rule or  
31 order adopted or issued to implement or enforce any of these  
32 provisions, the commissioner may require the licensee to post a  
33 surety bond twice the amount of the bond as is required consistent  
34 with the regulations.

35 (c) The bonds required under subdivisions (a) and (b) shall be  
36 payable to the commissioner and issued by an insurer authorized  
37 to do business in this state. An original surety bond, including any  
38 and all riders and endorsements executed subsequent to the  
39 effective date of the bond, shall be filed with the commissioner  
40 within 10 days of execution. For licensees with multiple licensed

1 locations, only one surety bond is required. The bond shall be used  
2 for the recovery of expenses, fines, and fees levied by the  
3 commissioner in accordance with this division or for losses or  
4 damages incurred by borrowers or consumers as the result of a  
5 licensee's noncompliance with the requirements of this division,  
6 or Division 1.6 (commencing with Section 4970).

7 (d) When an action is commenced on a licensee's bond, the  
8 commissioner may require the filing of a new bond. Immediately  
9 upon recovery of any action on the bond, the licensee shall file a  
10 new bond. Failure to file a new bond within 10 days of the recovery  
11 on a bond, or within 10 days after notification by the commissioner  
12 that a new bond is required, constitutes sufficient grounds for the  
13 suspension or revocation of the license.

14 ~~SEC. 7.~~

15 *SEC. 8.* Section 22168 is added to the Financial Code, to read:

16 22168. (a) For purposes of this section, and notwithstanding  
17 Section 22203, "consumer loan" has the meaning set forth in  
18 Section 4970.

19 (b) A mortgage broker who provides brokerage services to a  
20 borrower in connection with a consumer loan is the fiduciary of  
21 the borrower, and any violation of the person's fiduciary duties  
22 shall be a violation of this section. A mortgage broker who arranges  
23 a consumer loan owes this fiduciary duty to the borrower regardless  
24 of whether the mortgage broker may be acting for anyone else as  
25 an agent in the course of the loan transaction.

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

30 (1) A mortgage broker shall act in the borrower's best interest  
31 and in the utmost good faith toward the borrower and shall not  
32 compromise a borrower's right or interest in favor of another's  
33 right or interest, including, but not limited, to a right or interest of  
34 the mortgage broker.

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

37 (3) A mortgage broker shall follow reasonable and lawful  
38 instructions from the borrower.

39 (4) A mortgage broker shall use reasonable skill, care, and  
40 diligence.

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

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

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

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

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

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

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

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

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

39 (2) Notwithstanding paragraph (1), in a consumer loan other  
40 than a high-cost loan, a subprime loan, or a nontraditional loan, a

1 mortgage broker may receive compensation in the form of an  
2 increased rate not to exceed 100 basis points above the par rate  
3 for which the borrower qualifies, provided all of the following are  
4 satisfied:

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

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

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

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

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

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

34 (h) *The duties, rights, and remedies provided in this section are*  
35 *cumulative and in addition to any other duties, rights, and remedies*  
36 *provided by law.*

37 ~~SEC. 8. Section 23006 of the Financial Code is amended to~~  
38 ~~read:~~

39 ~~23006. At the time of filing the application, the applicant shall~~  
40 ~~pay to the commissioner the sum of two hundred fifty dollars~~

1 (~~\$250~~) as a fee for investigating the application, the sum of seven  
2 hundred fifty dollars (~~\$750~~) as an application fee, and the cost of  
3 fingerprint processing. The licensee shall also pay an annual  
4 renewal fee of six hundred dollars (~~\$600~~). The investigation fee  
5 and application fee are not refundable if an application is denied  
6 or withdrawn.

7 SEC. 9. Section 50003.5 is added to the Financial Code, to  
8 read:

9 50003.5. For purposes of this division, “mortgage broker”  
10 means any licensee under this division who provides brokerage  
11 services pursuant to Chapter 9 (commencing with Section 50700)  
12 in connection with a consumer loan, as defined in Section 4970.

13 SEC. 10. Section 50121 of the Financial Code is amended to  
14 read:

15 50121. The commissioner shall issue a license upon the  
16 satisfaction of all of the following:

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

19 (b) The filing as an exhibit to the application of a listing of  
20 material judgments filed against, and bankruptcy petitions filed  
21 by, the applicant for the preceding five years, and the disposition  
22 thereof.

23 (c) The payment of a nonrefundable investigation fee of two  
24 hundred fifty dollars (~~\$250~~), plus the cost of fingerprint processing  
25 and clearance, and an application filing fee of nine hundred dollars  
26 (~~\$900~~).

27 (d) An investigation of the statements required by Section 50124  
28 based upon which the commissioner is able to issue findings that  
29 the financial responsibility, criminal records (verified by  
30 fingerprint, at the discretion of the commissioner), experience,  
31 character, and general fitness of the applicant and of the partners  
32 or members thereof, if the applicant is a partnership or association,  
33 and of the principal officers and directors thereof, if the license  
34 applicant is a corporation, support a finding that the business will  
35 be operated honestly, fairly, and in accordance with the  
36 requirements of this division.

37 SEC. 11. Section 50205 of the Financial Code is amended to  
38 read:

39 50205. (a) A licensee shall maintain a surety bond in  
40 accordance with this subdivision. The bond shall be used for the

1 recovery of expenses, fines, and fees levied by the commissioner  
2 in accordance with this division or for losses or damages incurred  
3 by borrowers or consumers as the result of a licensee's  
4 noncompliance with the requirements of this division. Except as  
5 specified in subdivision (b), the bond shall be payable when the  
6 licensee fails to comply with a provision of this division and shall  
7 be in the amount of fifty thousand dollars (\$50,000), and may be  
8 increased by order of the commissioner to one hundred thousand  
9 dollars (\$100,000) upon a determination by the commissioner that  
10 the licensee is not in compliance with any provision of this chapter  
11 or any rule or order adopted or issued by the commissioner to  
12 implement or enforce provisions of this chapter.

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

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

33 (d) When an action is commenced on a licensee's bond, the  
34 commissioner may require the filing of a new bond. Immediately  
35 upon the recovery of an action on the bond, the licensee shall file  
36 a new bond. Failure to file a new bond within 10 days of the  
37 recovery on a bond, or within 10 days after notification by the  
38 commissioner that a new bond is required, constitutes sufficient  
39 grounds for the suspension or revocation of the license.

40 SEC. 12. Section 50513 is added to the Financial Code, to read:

1 50513. (a) A mortgage broker who provides brokerage services  
2 to a borrower is the fiduciary of the borrower, and any violation  
3 of the person's fiduciary duties shall be a violation of this section.  
4 A mortgage broker who arranges a consumer loan owes this  
5 fiduciary duty to the borrower regardless of whether the mortgage  
6 broker may be acting for anyone else as an agent in the course of  
7 the loan transaction.

8 (b) In addition to duties imposed by other statutes or at common  
9 law, a mortgage broker shall comply with all of the following  
10 duties, which may not be waived by the borrower or modified by  
11 the mortgage broker:

12 (1) A mortgage broker shall act in the borrower's best interest  
13 and in the utmost good faith toward the borrower and shall not  
14 compromise a borrower's right or interest in favor of another's  
15 right or interest, including, but not limited to, a right or interest of  
16 the mortgage broker.

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

19 (3) A mortgage broker shall follow reasonable and lawful  
20 instructions from the borrower.

21 (4) A mortgage broker shall use reasonable skill, care, and  
22 diligence.

23 (5) A mortgage broker shall clearly disclose to the borrower, in  
24 a timely fashion, all material information that might reasonably  
25 affect the borrower's rights, interests, or ability to receive the  
26 borrower's intended benefit from the consumer loan, including,  
27 but not limited to, total compensation the mortgage broker would  
28 receive from any of the loan options the mortgage broker presents  
29 to the borrower.

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

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

37 (8) A mortgage broker shall not accept, give, or charge any  
38 undisclosed compensation or realize any undisclosed remuneration,  
39 whether through direct or indirect means, that inures to the benefit  
40 of the mortgage broker on an expenditure made for the borrower.

1 (c) (1) A mortgage broker shall not steer, counsel, or direct a  
2 borrower to a consumer loan with rates, charges, principal amount,  
3 or prepayment terms that are more costly than that for which the  
4 borrower qualifies.

5 (2) If unable to suggest, offer, or recommend to a borrower a  
6 consumer loan that is not more expensive than that for which the  
7 consumer qualifies, a mortgage broker shall disclose both of the  
8 following to the consumer:

9 (A) That the lenders with whom the mortgage broker has a  
10 business relationship do not offer a consumer loan that is not more  
11 expensive than that for which the borrower qualifies, but that other  
12 creditors may offer such a loan.

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

16 (d) (1) A mortgage broker shall not receive, directly or  
17 indirectly, any compensation for placing a borrower in a consumer  
18 loan that is more costly than that for which the borrower qualifies,  
19 or that is based on, or varies with, the terms of any home mortgage  
20 loan, other than the amount of loan principal.

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

27 (A) The mortgage broker receives no other compensation,  
28 however denominated, directly or indirectly, from the borrower,  
29 creditor, or other mortgage originator.

30 (B) The loan does not include discount points, origination points,  
31 or rate reduction points, however denominated, or any payment  
32 reduction fee, however denominated.

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

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

37 (e) For a period of one year from the consummation of a  
38 consumer loan that was negotiated or arranged by a mortgage  
39 broker, that mortgage broker shall not engage in direct marketing  
40 or initiate any communication with the borrower regarding

1 refinancing of that consumer loan. “Direct marketing” and  
2 “communication” shall include any communication directed at a  
3 specific person without the use of intervening media, including,  
4 but not limited to, the following methods: telephone, electronic  
5 mail, United States mail or other form of courier service, and  
6 in-person communication. This subdivision shall not restrict a  
7 mortgage broker from responding to specific customer inquiries  
8 regarding refinancing.

9 (f) A mortgage broker who fails to comply with the provisions  
10 of this section shall be civilly liable to the consumer in an amount  
11 equal to any actual damages suffered by the consumer, plus  
12 attorneys fees and costs. A court may, in addition to any other  
13 remedy, award punitive damages to the consumer upon a finding  
14 that damages are warranted pursuant to Section 3294 of the Civil  
15 Code.

16 (g) *The duties, rights, and remedies provided in this section are*  
17 *cumulative and in addition to any other duties, rights, and remedies*  
18 *provided by law.*

19 SEC. 13. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.