

AMENDED IN SENATE JULY 23, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 34

Introduced by Assembly Member Nava
(Principal coauthor: Senator Calderon)

December 1, 2008

~~An act to amend Sections 10140.6, 10150, 10235.5, and 10236.4 of, to add Article 2.1 (commencing with Section 10166.01) to Chapter 3 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, and to amend Sections 22101, 22101.5, 22102, 22104, 22107, 22108, 22109, 22112, 22153, 22170, 50002, 50003, 50121, 50122, 50124, 50125, 50126, 50130, 50204, 50205, 50208, 50307, 50309, 50310, 50311, 50314, 50317, 50318, 50320, 50321, 50322, 50323, 50325, 50326, 50327, 50700, and 50701 of, to add Sections 22012, 22013, 22014, 22015, 22016, 22017, 22018, 22019, 22020, 22021, 22022, 22023, 22180, 22181, 22182, 22183, 22184, 22185, 22186, 22187, 22188, 22189, 22190, 22191, 22192, 22193, 22194, 50110, 50110.1, 50110.2, 50110.3, 50110.4, 50110.5, 50110.6, 50110.7, 50110.8, 50110.9, 50110.10, 50110.11, 50110.12, 50110.16, and 50209 to, and to repeal Section 50705 of, the Financial Code, relating to mortgage lending. An act to amend Sections 10100, 10140.6, 10150, 10151, 10235.5, and 10236.4 of, to add Article 2.1 (commencing with Section 10166.01) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, to amend Sections 22100, 22101, 22101.5, 22102, 22103, 22104, 22106, 22107, 22108, 22109, 22112, 22151, 22152, 22153, 22154, 22155, 22156, 22157, 22159, 22168, 22169, 22170, 22171, 22700, 50002, 50003,~~

50120, 50121, 50122, 50123, 50124, 50125, 50126, 50128, 50129, 50130, 50200, 50201, 50202, 50204, 50205, 50206, 50208, 50302, 50307, 50310, 50317, 50318, 50320, 50325, 50328, 50333, 50401, 50700, and 50701 of, to add Sections 22012, 22013, 22014, 22105.1, 22105.2, 22105.3, 22105.4, 22109.1, 22109.2, 22109.3, 22109.4, 22109.5, 22109.6, 22172, 22347, 22755, 50002.5, 50003.5, 50003.6, 50209, 50307.2, and 50513 to, to add Chapter 3.5 (commencing with Section 50140) and Chapter 3.6 (commencing with Section 50150) to Division 20 of, and to repeal Sections 50601, 50602, and 50705 of, the Financial Code, and to add Section 18034 to the Health and Safety Code, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 34, as amended, Nava. Real estate, finance lender, and residential mortgage lender licenses: mortgage loan originators.

(1) Existing law, the Real Estate Law, governs the licensing and regulation of real estate licensees, as defined, as administered by the Real Estate Commissioner. Existing law imposes specified requirements on real estate brokers who solicit borrowers or lenders or negotiate loans or collect payments or perform services for borrowers or lenders relative to loans secured by real property. A willful violation of the Real Estate Law is a crime.

This bill would require a real estate license endorsement from the commissioner in order to engage in the business of a mortgage loan originator, as defined. The bill would establish penalties if a real estate licensee fails to obtain a license endorsement before conducting business as a mortgage loan originator and would authorize the commissioner to suspend or revoke a real estate license for a failure to pay these penalties. The bill would require applicants for a license endorsement as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry. The bill would establish standards for issuance and renewal of a license endorsement to act as a mortgage loan originator, including satisfying specified educational requirements. The bill would require these real estate licensees to annually submit business activities reports, and other reports that may be required, to the commissioner. The bill would authorize the commissioner to examine the affairs of real estate brokers, including those that obtain license endorsement as a mortgage loan

originator. The bill would require the commissioner to report violations of the provisions regulating real estate brokers and mortgage loan originators to the Nationwide Mortgage Licensing System and Registry. The bill would require recipients of a license endorsement as a mortgage loan originator to use or disclose a specified unique identifier provided by the Nationwide Mortgage Licensing System and Registry in advertisements and solicitations of the mortgage loan originator. The bill would enact other related provisions.

(2) Existing law provides for the licensure and regulation of finance lenders and brokers and residential mortgage lenders and servicers by the Department of Corporations. A willful violation of the laws regulating these licensees is a crime.

This bill would require the licensure and regulation of mortgage loan originators, as defined, under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The bill would require mortgage loan originators to also be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The bill would require applicants for licensure as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry and would require applicants for licensure or license renewal to satisfy certain requirements, including educational requirements. The bill would require finance lenders and brokers, and residential mortgage lenders and servicers, that employ a mortgage loan originator to maintain a minimum net worth of \$250,000. The bill would authorize the commissioner to require finance lenders and brokers, and residential mortgage lenders and servicers, that employ a mortgage loan originator to submit reports of condition to the Nationwide Mortgage Licensing System and Registry. The bill would authorize the commissioner to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry, as specified, for the purposes of implementing these provisions of the bill. The bill would require a mortgage loan originator to use or disclose a specified unique identifier on all mortgage loan applications, solicitations, or advertisements. The bill would enact other related provisions.

(3) This bill would provide that no person is required to have a mortgage loan originator license under the California Finance Lenders Law or the California Residential Mortgage Lending Act before July 31, 2010, nor a mortgage loan originator license endorsement under the Real Estate Law, as set forth in the bill, before December 31, 2010.

(4) Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

~~(1) Existing law, the Real Estate Law, governs the licensing and regulation of real estate licensees, as defined, as administered by the Real Estate Commissioner. Existing law imposes specified requirements on real estate brokers who solicit borrowers or lenders or negotiate loans or collect payments or perform services for borrowers or lenders relative to loans secured by real property. A willful violation of the Real Estate Law is a crime.~~

~~This bill would require a real estate license endorsement from the commissioner in order to engage in the business of a mortgage loan originator, as defined. The bill would establish penalties if a real estate licensee fails to obtain a license endorsement before conducting business as a mortgage loan originator and would authorize the commissioner to suspend or revoke a real estate license for a failure to pay these penalties. The bill would require applicants for a license endorsement as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry. The bill would establish standards for issuance and renewal of a license endorsement to act as a mortgage loan originator, including satisfying specified education requirements. The bill would require these real estate licensees to annually submit business activities reports, and other reports that may be required, to the commissioner. The bill would authorize the commissioner to examine the affairs of real estate brokers, including those that obtain license endorsement as a mortgage loan originator. The bill would require the commissioner to report violations of the provisions regulating real estate brokers and mortgage loan originators to the Nationwide Mortgage Licensing System and Registry. The bill would require recipients of a license endorsement as a mortgage loan originator to use or disclose a specified unique identifier provided by the Nationwide Mortgage Licensing System and Registry in~~

~~advertisements and solicitations of the mortgage loan originator. The bill would enact other related provisions:~~

~~(2) Existing law provides for the licensure and regulation of finance lenders and brokers and residential mortgage lenders and servicers by the Department of Corporations. A willful violation of the laws regulating these licensees is a crime.~~

~~This bill would require the licensure and regulation of mortgage loan originators, as defined, under the California Finance Lenders Law and the California Residential Mortgage Lending Act. The bill would require mortgage loan originators to also be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The bill would require applicants for licensure as a mortgage loan originator to furnish specified background information to the Nationwide Mortgage Licensing System and Registry and would require applicants for licensure or license renewal to satisfy certain requirements, including education requirements. The bill would require finance lenders and brokers engaged in the business of making or brokering residential mortgage loans to maintain a minimum net worth of \$250,000. The bill would require finance lenders and brokers, and residential mortgage lenders or servicers, that employ mortgage loan originators to submit reports of condition to the Nationwide Mortgage Licensing System and Registry and would authorize the commissioner, by regulation or order, to require mortgage loan originators to submit reports of condition to the Nationwide Mortgage Licensing System and Registry. The bill would require a person originating residential mortgage loans to use or disclose a specified unique identifier on all mortgage loan applications, solicitations, or advertisements. The bill would enact other related provisions:~~

~~(3) Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

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

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

1 SECTION 1. Section 10100 of the Business and Professions
2 Code is amended to read:

3 10100. Before denying, suspending or revoking any license or
4 license endorsement issuable or issued under the provisions of this
5 part, the department shall proceed as prescribed by Chapter 5
6 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code, and the department shall have all the
8 powers granted therein.

9 SEC. 2. Section 10131.8 of the Business and Professions Code
10 is repealed.

11 ~~10131.8. (a) A real estate broker who acts pursuant to~~
12 ~~subdivision (d) of Section 10131 and who meets all of the~~
13 ~~following requirements shall notify the department annually in~~
14 ~~writing on a form that is acceptable to the commissioner:~~

15 ~~(1) The real estate broker is an approved lender for the Federal~~
16 ~~Housing Administration, Veterans Administration, Farmers Home~~
17 ~~Administration, Government National Mortgage Association,~~
18 ~~Federal National Mortgage Administration, or the Federal Home~~
19 ~~Loan Mortgage Corporation.~~

20 ~~(2) The real estate broker makes residential mortgage loans to~~
21 ~~a loan applicant for a residential mortgage loan by using or~~
22 ~~advancing the broker's own funds, or by making a commitment~~
23 ~~to advance the broker's own funds.~~

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

26 ~~(4) The real estate broker at all times maintains a tangible net~~
27 ~~worth, computed in accordance with generally accepted accounting~~
28 ~~standards, of a minimum of two hundred fifty thousand dollars~~
29 ~~(\$250,000).~~

30 ~~(b) As used in paragraph (2) of subdivision (a), "own funds"~~
31 ~~means (1) cash, corporate capital, or warehouse credit lines at~~
32 ~~commercial banks, savings banks, savings and loan associations,~~
33 ~~industrial loan companies, or other sources that are liability items~~
34 ~~on the real estate broker's financial statements, whether secured~~
35 ~~or unsecured, or (2) cash, corporate capital, or warehouse credit~~
36 ~~lines at commercial banks, savings banks, savings and loan~~
37 ~~associations, industrial loan companies, or other sources that are~~
38 ~~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. 3. Section 10140.6 of the Business and Professions Code*
6 *is amended to read:*

7 10140.6. (a) A real estate licensee shall not publish, circulate,
8 distribute, or cause to be published, circulated, or distributed in
9 any newspaper or periodical, or by mail, any matter pertaining to
10 any activity for which a real estate license is required that does
11 not contain a designation disclosing that he or she is performing
12 acts for which a real estate license is required.

13 (b) (1) A real estate licensee shall disclose his or her license
14 identification number *and, if that licensee is a mortgage loan*
15 *originator, the unique identifier assigned to that licensee by the*
16 *Nationwide Mortgage Licensing System and Registry, on all*
17 *solicitation materials intended to be the first point of contact with*
18 *consumers and on real property purchase agreements when acting*
19 *as an agent in those transactions. The commissioner may adopt*
20 *regulations identifying the materials in which a licensee must*
21 *disclose a license identification number and, if that licensee is a*
22 *mortgage loan originator, the unique identifier assigned to that*
23 *licensee by the Nationwide Mortgage Licensing System and*
24 *Registry.*

25 (2) For purposes of this section, “solicitation materials intended
26 to be the first point of contact with consumers” includes business
27 cards, stationery, advertising fliers, and other materials designed
28 to solicit the creation of a professional relationship between the
29 licensee and a consumer, and excludes an advertisement in print
30 or electronic media and “for sale” signs.

31 (3) Nothing in this section shall be construed to limit or change
32 the requirement described in Section 10236.4 as applicable to real
33 estate brokers.

34 (c) The provisions of this section shall not apply to classified
35 rental advertisements reciting the telephone number at the premises
36 of the property offered for rent or the address of the property
37 offered for rent.

38 ~~(d) The amendments made to this section by the act adding this~~
39 ~~subdivision shall become operative on July 1, 2009.~~

1 (d) “Mortgage loan originator,” “unique identifier,” and
2 “Nationwide Mortgage Licensing System and Registry” have the
3 meanings set forth in Section 10166.01.

4 SEC. 4. Section 10150 of the Business and Professions Code
5 is amended to read:

6 10150. (a) Application for the real estate broker license
7 examination shall be made in writing to the commissioner. The
8 commissioner may prescribe the format and content of the broker
9 examination application. The application for the broker
10 examination shall be accompanied by the real estate broker license
11 examination fee.

12 (b) Persons who have been notified by the commissioner that
13 they passed the real estate broker license examination may apply
14 for a real estate broker license. A person applying for the broker
15 examination may also apply for a real estate broker license.
16 However, a license shall not be issued until the applicant passes
17 the real estate broker license examination. If there is any change
18 to the information contained in a real estate broker license
19 application after the application has been submitted and before the
20 license has been issued, the commissioner may require the applicant
21 to submit a supplement to the application listing the changed
22 information.

23 (c) Application for the real estate broker license shall be made
24 in writing to the commissioner. The commissioner may prescribe
25 the format and content of the broker license application. The
26 application for the real estate broker license shall be accompanied
27 by the appropriate fee.

28 (d) Application for an endorsement to act as a mortgage loan
29 originator, as defined in Section 10166.01, shall be made either
30 electronically or in writing as directed by the commissioner. The
31 commissioner may prescribe the format and content of the
32 mortgage loan originator endorsement application, which shall
33 meet the minimum requirements for licensing of a mortgage loan
34 originator, pursuant to the Secure and Fair Enforcement for
35 Mortgage Licensing Act of 2008 (Public Law 110-289).

36 SEC. 5. Section 10151 of the Business and Professions Code
37 is amended to read:

38 10151. (a) Application for the real estate salesperson license
39 examination shall be made in writing to the commissioner. The
40 commissioner may prescribe the format and content of the

1 salesperson examination application. The application for the
2 salesperson examination shall be accompanied by the real estate
3 salesperson license examination fee.

4 (b) Persons who have been notified by the commissioner that
5 they passed the real estate salesperson license examination may
6 apply for a real estate salesperson license. A person applying for
7 the salesperson examination may also apply for a real estate
8 salesperson license. However, a license shall not be issued until
9 the applicant passes the real estate salesperson license examination.
10 If there is any change to the information contained in a real estate
11 salesperson license application after the application has been
12 submitted and before the license has been issued, the commissioner
13 may require the applicant to submit a supplement to the application
14 listing the changed information.

15 (c) An application for the real estate salesperson license
16 examination or for both the examination and license that is received
17 by the commissioner on or after October 1, 2007, shall include
18 evidence or certification, satisfactory to the commissioner, of
19 successful completion at an accredited institution of a
20 three-semester unit course, or the quarter equivalent thereof, or
21 successful completion of an equivalent course of study as defined
22 in Section 10153.5, in real estate principles as well as the successful
23 completion at an accredited institution of a course in real estate
24 practice and one additional course set forth in Section 10153.2,
25 other than real estate principles, real estate practice, advanced legal
26 aspects of real estate, advanced real estate finance, or advanced
27 real estate appraisal. The applicant shall provide this evidence or
28 certification to the commissioner prior to taking the real estate
29 salesperson license examination.

30 (d) The commissioner shall waive the requirements of this
31 section for the following applicants:

32 (1) An applicant who is a member of the State Bar of California.

33 (2) An applicant who has qualified to take the examination for
34 an original real estate broker license by satisfying the requirements
35 of Section 10153.2.

36 (e) *Application for endorsement to act as a mortgage loan*
37 *originator, as defined in Section 10166.01, shall be made either*
38 *electronically or in writing as directed by the commissioner. The*
39 *commissioner may prescribe the format and the content of the*
40 *mortgage loan originator endorsement application, which shall*

1 *meet the minimum requirements for licensing of a mortgage loan*
 2 *originator, pursuant to the Secure and Fair Enforcement for*
 3 *Mortgage Licensing Act of 2008 (Public Law 110.289).*

4 *SEC. 6. Article 2.1 (commencing with Section 10166.01) is*
 5 *added to Chapter 3 of Part 1 of Division 4 of the Business and*
 6 *Professions Code, to read:*

7
 8 *Article 2.1. Secure and Fair Enforcement for Mortgage Licenses*
 9

10 *10166.01. For purposes of this article, the following definitions*
 11 *shall apply:*

12 *(a) "SAFE Act" means the federal Secure and Fair Enforcement*
 13 *for Mortgage Licensing Act of 2008 (Public Law 110-289).*

14 *(b) (1) "Mortgage loan originator" means an individual who*
 15 *takes a residential mortgage loan application or offers or*
 16 *negotiates terms of a residential mortgage loan for compensation*
 17 *or gain. An individual real estate licensee acting within the*
 18 *meaning of paragraph (d) of Section 10131 is a mortgage loan*
 19 *originator for purposes of this article with respect to activities*
 20 *involving residential mortgage loans.*

21 *(2) Mortgage loan originator does not include any of the*
 22 *following:*

23 *(A) An individual who performs purely administrative or clerical*
 24 *tasks on behalf of a person meeting the definition of a mortgage*
 25 *loan originator, except as otherwise provided in subdivision (c)*
 26 *of Section 10166.03. The term "administrative or clerical tasks"*
 27 *means the receipt, collection, and distribution of information*
 28 *common for the processing or underwriting of a loan in the*
 29 *mortgage industry and communication with a consumer to obtain*
 30 *information necessary for the processing or underwriting of a*
 31 *residential mortgage loan.*

32 *(B) An individual that only performs real estate brokerage*
 33 *services, as defined in subdivision (a) or (b) of Section 10131,*
 34 *unless that person is compensated by a lender, other mortgage*
 35 *loan originator, or by any agent of any lender or other mortgage*
 36 *loan originator.*

37 *(C) An individual who solely renegotiates terms for existing*
 38 *mortgage loans held or serviced by his or her employer and who*
 39 *does not otherwise act as a mortgage loan originator, unless the*
 40 *United States Department of Housing and Urban Development or*

1 a court of competent jurisdiction determines that the SAFE Act
2 requires such an employee to be licensed as a mortgage loan
3 originator under state laws implementing the SAFE Act.

4 (D) An individual that is solely involved in extensions of credit
5 relating to timeshare plans, as that term is defined in Section
6 101(53D) of Title 11 of the United States Code.

7 (E) An individual licensed or registered as a mortgage loan
8 originator pursuant to the provisions of the Financial Code and
9 the SAFE Act.

10 (c) “Nationwide Mortgage Licensing System and Registry”
11 means a mortgage licensing system developed and maintained by
12 the Conference of State Bank Supervisors and the American
13 Association of Residential Mortgage Regulators for the licensing
14 and registration of mortgage loan originators.

15 (d) “Residential mortgage loan” means any loan primarily for
16 personal, family, or household use that is secured by a mortgage,
17 deed of trust, or other equivalent consensual security interest on
18 a dwelling, or residential real estate upon which is constructed or
19 intended to be constructed a dwelling. “Dwelling” means a
20 residential structure that contains one to four units, whether or
21 not that structure is attached to real property. The term includes
22 an individual condominium unit, cooperative unit, mobilehome,
23 or trailer, if it is used as a residence.

24 (e) “Unique identifier” means a number or other identifier
25 assigned by protocols established by the Nationwide Mortgage
26 Licensing System and Registry.

27 (f) “Loan processor or underwriter” means an individual who
28 performs clerical or support duties as an employee at the direction
29 of, and subject to the supervision and instruction of, a mortgage
30 loan originator.

31 10166.02. (a) A real estate broker who acts pursuant to Section
32 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
33 arranges, or services loans secured by real property containing
34 one to four residential units, and any salesperson who acts in a
35 similar capacity under the supervision of that broker, shall notify
36 the department within 30 days of the effective date of this section
37 or upon commencing that activity, whichever is later. The
38 notification shall be made in writing, as directed, on a form that
39 is acceptable to the commissioner.

1 ***(b) No individual may engage in business as a mortgage loan***
2 ***originator under this article without first doing both of the***
3 ***following:***

4 ***(1) Obtaining and maintaining a real estate license pursuant***
5 ***to Article 2 (commencing with Section 10150).***

6 ***(2) Obtaining and maintaining a real estate license endorsement***
7 ***pursuant to this article identifying that individual as a licensed***
8 ***mortgage loan originator.***

9 ***(c) License endorsements shall be valid for a period of one year***
10 ***and shall expire on the 31st of December each year.***

11 ***(d) Applicants for a mortgage loan originator license***
12 ***endorsement shall apply in a form prescribed by the commissioner.***
13 ***Each form shall contain content as set forth by rule, regulation,***
14 ***instruction, or procedure of the commissioner.***

15 ***(e) In order to fulfill the purposes of this article, the***
16 ***commissioner may establish relationships or contracts with the***
17 ***Nationwide Mortgage Licensing System and Registry or other***
18 ***entities designated by the Nationwide Mortgage Licensing System***
19 ***and Registry to collect and maintain records and process***
20 ***transaction fees or other fees related to licensees or other persons***
21 ***subject to this article.***

22 ***(f) A real estate broker who fails to notify the department***
23 ***pursuant to subdivision (a), or who fails to obtain a license***
24 ***endorsement required pursuant to paragraph (2) of subdivision***
25 ***(b), shall be assessed a penalty of fifty dollars (\$50) per day for***
26 ***each day written notification has not been received or a license***
27 ***endorsement has not been obtained, up to and including the 30th***
28 ***day after the first day of the assessment penalty. On and after the***
29 ***31st day, the penalty is one hundred dollars (\$100) per day, not***
30 ***to exceed a total penalty of ten thousand dollars (\$10,000),***
31 ***regardless of the number of days, until the department receives***
32 ***the written notification or the licensee obtains the license***
33 ***endorsement. Penalties for violations of subdivisions (a) and (b)***
34 ***shall be additive.***

35 ***(g) The commissioner may suspend or revoke the license of a***
36 ***real estate broker who fails to pay a penalty imposed pursuant to***
37 ***this section. In addition, the commissioner may bring an action in***
38 ***an appropriate court of this state to collect payment of that penalty.***

39 ***(h) All penalties paid or collected under this section shall be***
40 ***deposited into the Recovery Account of the Real Estate Fund and***

1 shall, upon appropriation by the Legislature, be available for
2 expenditure for the purposes specified in Chapter 6.5 (commencing
3 with Section 10470).

4 10166.03. (a) A loan processor or underwriter who does not
5 represent to the public, through advertising or other means of
6 communicating or providing information, including the use of
7 business cards, stationery, brochures, signs, rate lists, or other
8 promotional items, that the individual can or will perform any of
9 the activities of a mortgage loan originator shall not be required
10 to obtain a license endorsement as a mortgage loan originator.

11 (b) An individual engaging solely in loan processor or
12 underwriter activities shall not represent to the public, through
13 advertising or other means of communicating or providing
14 information including the use of business cards, stationery,
15 brochures, signs, rate lists, or other promotional items, that the
16 individual can or will perform any of the activities of a mortgage
17 loan originator.

18 (c) An independent contractor who is employed by a mortgage
19 loan originator may not engage in the activities of a loan processor
20 or underwriter for a residential mortgage loan unless the
21 independent contractor loan processor or underwriter obtains and
22 maintains an endorsement as a mortgage loan originator under
23 this article. Each independent contractor loan processor or
24 underwriter who obtains and maintains an endorsement as a
25 mortgage loan originator under this article shall have and maintain
26 a valid unique identifier issued by the Nationwide Mortgage
27 Licensing System and Registry.

28 10166.04. (a) In connection with an application to the
29 commissioner for a license endorsement as a mortgage loan
30 originator, every applicant shall furnish to the Nationwide
31 Mortgage Licensing System and Registry information concerning
32 the applicant's identity, including the following:

33 (1) Fingerprint images and related information, for purposes
34 of performing a federal, or both a state and federal, criminal
35 history background check.

36 (2) Personal history and experience in a form prescribed by the
37 Nationwide Mortgage Licensing System and Registry, including
38 the submission of authorization for the Nationwide Mortgage
39 Licensing System and Registry and the commissioner to obtain
40 both of the following:

1 (A) An independent credit report from a consumer reporting
2 agency.

3 (B) Information related to any administrative, civil, or criminal
4 findings by any governmental jurisdiction.

5 (b) The commissioner may ask the Nationwide Mortgage
6 Licensing System and Registry to obtain state criminal history
7 background check information on applicants described in
8 subdivision (a) using the procedures set forth in subdivisions (c)
9 and (d).

10 (c) If the Nationwide Mortgage Licensing System and Registry
11 electronically submits fingerprint images and related information,
12 as required by the Department of Justice, for an applicant for a
13 mortgage loan originator license endorsement, to the Department
14 of Justice for the purposes of obtaining information as to the
15 existence and content of a record of state convictions and state
16 arrests, and as to the existence and content of a record of state
17 arrests for which the Department of Justice establishes that the
18 person is free on bail or on his or her recognizance pending trial
19 or appeal, the Department of Justice shall provide an electronic
20 response to the Nationwide Mortgage Licensing System and
21 Registry pursuant to paragraph (1) of subdivision (p) of Section
22 11105 of the Penal Code, and shall provide the same electronic
23 response to the department.

24 (d) The Nationwide Mortgage Licensing System and Registry
25 may request from the Department of Justice subsequent arrest
26 notification service, as provided pursuant to Section 11105.2 of
27 the Penal Code, for persons described in subdivision (a). The
28 Department of Justice shall provide the same electronic response
29 to the department.

30 (e) The Department of Justice shall charge a fee sufficient to
31 cover the cost of processing the requests described in this section.

32 10166.05. Notwithstanding any other provision of law, the
33 commissioner shall not issue a license endorsement to act as a
34 mortgage loan originator to an applicant unless the commissioner
35 makes all of the following findings:

36 (a) The applicant has never had a mortgage loan originator
37 license revoked in any governmental jurisdiction, except that a
38 subsequent formal vacation of a revocation shall not be deemed
39 a revocation.

1 (b) *The applicant has not been convicted of, or pled guilty or*
2 *nolo contendere to, a felony in a domestic, foreign, or military*
3 *court, under either of the following conditions, however, any*
4 *pardon of a conviction shall not be considered a conviction for*
5 *purposes of this subdivision:*

6 (1) *During the seven-year period preceding the date of the*
7 *application for licensing.*

8 (2) *At any time preceding the date of application, if the felony*
9 *involved an act of fraud, dishonesty, a breach of trust, or money*
10 *laundering.*

11 (c) *The applicant has demonstrated such financial responsibility,*
12 *character, and general fitness as to command the confidence of*
13 *the community and warrant a determination that the mortgage*
14 *loan originator will operate honestly, fairly, and efficiently within*
15 *the purposes of the article.*

16 (d) *The applicant has complied with the education and written*
17 *testing requirements in Section 10166.06.*

18 10166.06. (a) *In addition to the requirements of Section 10153,*
19 *an applicant for a license endorsement as a mortgage loan*
20 *originator shall complete at least 20 hours of education courses,*
21 *which shall include at least the following:*

22 (1) *Three hours of federal law and regulations.*

23 (2) *Three hours of ethics, which shall include instruction on*
24 *fraud, consumer protection, and fair lending issues.*

25 (3) *Two hours of training related to lending standards for the*
26 *nontraditional mortgage product marketplace.*

27 (b) *For purposes of this section, education courses are only*
28 *acceptable if they have been reviewed and approved, or otherwise*
29 *deemed acceptable, by the Nationwide Mortgage Licensing System*
30 *and Registry, in accordance with the SAFE Act. Education may*
31 *be offered in a classroom, online, or by any other means approved*
32 *by the Nationwide Mortgage Licensing System and Registry, in*
33 *accordance with the SAFE Act.*

34 (c) *A person who successfully completes the education*
35 *requirements approved by the Nationwide Mortgage Licensing*
36 *System and Registry in any state other than California shall be*
37 *granted credit by the commissioner toward completion of the*
38 *education requirements of this section.*

39 (d) *Before being issued a license endorsement to act as a*
40 *mortgage loan originator, an individual shall pass a qualified*

1 written test developed or otherwise deemed acceptable by the
2 Nationwide Mortgage Licensing System and Registry and
3 administered by a test provider approved or otherwise deemed
4 acceptable by the Nationwide Mortgage Licensing System and
5 Registry.

6 (e) A written test shall not be treated as a qualified written test
7 for purposes of this section, unless the test adequately measures
8 the applicant's knowledge and comprehension in the following
9 subject areas: ethics, federal law and regulation pertaining to
10 mortgage origination, state law and regulation pertaining to
11 mortgage origination, and federal and state law and regulation
12 relating to fraud, consumer protection, the nontraditional mortgage
13 marketplace, and fair lending issues.

14 (f) Nothing in this section shall prohibit a test provider approved
15 by the Nationwide Mortgage Licensing System and Registry from
16 providing a test at the location of the employer of the applicant or
17 any subsidiary or affiliate of the employer of the applicant, or any
18 entity with which the applicant holds an exclusive arrangement to
19 conduct the business of a mortgage loan originator.

20 (g) An individual shall not be considered to have passed a
21 qualified written test administered pursuant to this section unless
22 the individual achieves a test score of not less than 75 percent
23 correct answers to questions.

24 (h) An individual who fails the qualified written test may retake
25 the test up to three consecutive times, although at least 30 days
26 must pass between each retesting.

27 (i) An applicant who fails three consecutive retests must wait
28 at least six months before retesting.

29 (j) A mortgage loan originator who fails to maintain a valid
30 license endorsement for a period of five years or longer or who
31 fails to register as a mortgage loan originator in accordance with
32 applicable California law shall retake the qualified written test.

33 10166.07. (a) A real estate broker who acts pursuant to Section
34 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,
35 arranges, or services one or more loans in a calendar year that
36 are secured by real property containing one to four residential
37 units, shall annually file a business activities report, within 90
38 days after the end of the broker's fiscal year or within any
39 additional time as the commissioner may allow for filing for good
40 cause. The report shall contain within its scope all of the following

1 *information for the fiscal year, relative to the business activities*
2 *of the broker and those of any other brokers and real estate*
3 *salespersons acting under that broker's supervision:*

4 *(1) Name and license number of the supervising broker and*
5 *names and license numbers of the real estate brokers and*
6 *salespersons under that broker's supervision. The report shall*
7 *include brokers and salespersons who were under the supervising*
8 *broker's supervision for all or part of the year.*

9 *(2) A list of the real estate-related activities in which the*
10 *supervising broker and the brokers and salespersons under his or*
11 *her supervision engaged during the prior year. This listing shall*
12 *identify all of the following:*

13 *(A) Activities relating to mortgages, including arranging,*
14 *making, or servicing.*

15 *(B) Other activities performed under the real estate broker's*
16 *or salesperson's license.*

17 *(C) Activities performed under related licenses, including, but*
18 *not limited to, a license to engage as a finance lender or a finance*
19 *broker under the California Finance Lenders Law (Division 9*
20 *commencing with Section 22000) of the Financial Code), or a*
21 *license to engage as a residential mortgage lender or residential*
22 *mortgage loan servicer under the California Residential Mortgage*
23 *Lending Act (Division 20 commencing with Section 50000) of the*
24 *Financial Code).*

25 *(3) A list of the forms of media used by the broker and those*
26 *under his or her supervision to advertise to the public, including*
27 *print, radio, television, the Internet, or other means.*

28 *(4) For fixed rate loans made, brokered, or serviced, all of the*
29 *following:*

30 *(A) The total number, aggregate principal amount, lowest*
31 *interest rate, highest interest rate, and a list of the institutional*
32 *lenders of record. If the loan was funded by any lender other than*
33 *an institutional lender, the broker shall categorize the loan as*
34 *privately funded.*

35 *(B) The total number and aggregate principal amount of covered*
36 *loans, as defined in Section 4970 of the Financial Code.*

37 *(C) The total number and aggregate principal amount of loans*
38 *for which Department of Real Estate form RE Form 885 or an*
39 *equivalent is required.*

1 (5) For adjustable rate loans made, brokered, or serviced, all
2 of the following:

3 (A) The total number, aggregate principal amount, lowest
4 beginning interest rate, highest beginning interest rate, highest
5 margin, and a list of the institutional lenders of record. If the loan
6 was funded by any lender other than an institutional lender, the
7 broker shall categorize the loan as privately funded.

8 (B) The total number and aggregate principal amount of covered
9 loans, as defined in Section 4970 of the Financial Code.

10 (C) The total number and aggregate principal amount of loans
11 for which Department of Real Estate form RE Form 885 or an
12 equivalent is required.

13 (6) For all loans made, brokered, or serviced, the total number
14 and aggregate principal amount of loans funded by institutional
15 lenders, and the total number and aggregate principal amount of
16 loans funded by private lenders.

17 (7) For all loans made, brokered, or serviced, the total number
18 and aggregate principal amount of loans that included a
19 prepayment penalty, the minimum prepayment penalty length, the
20 maximum prepayment penalty length, and the number of loans
21 with prepayment penalties whose length exceeded the length of
22 time before the borrower's loan payment amount could increase.

23 (8) For all loans brokered, the total compensation received by
24 the broker, including yield spread premiums, commissions, and
25 rebates, but excluding compensation used to pay fees for
26 third-party services on behalf of the borrower.

27 (9) For all mortgage loans made or brokered, the total number
28 of loans for which a mortgage loan disclosure statement was
29 provided in a language other than English, and the number of
30 forms provided per language other than English.

31 (10) For all mortgage loans serviced, the total amount of funds
32 advanced to be applied toward a payment to protect the security
33 of the note being serviced.

34 (11) For purposes of this section, an institutional lender has
35 the meaning specified in paragraph (1) of subdivision (c) of Section
36 10232.

37 (b) A broker subject to this section and Section 10232.2 may
38 file consolidated reports that include all of the information required
39 under this section and Section 10232.2. Those consolidated reports

1 shall clearly indicate that they are intended to satisfy the
2 requirements of both sections.

3 (c) If a broker subject to this section fails to timely file the report
4 required under this section, the commissioner may cause an
5 examination and report to be made and may charge the broker
6 one and one-half times the cost of making the examination and
7 report. In determining the hourly cost incurred by the commissioner
8 for conducting an examination and preparing the report, the
9 commissioner may use the estimated average hourly cost for all
10 department audit staff performing audits of real estate brokers. If
11 a broker fails to pay the commissioner's cost within 60 days of the
12 mailing of a notice of billing, the commissioner may suspend the
13 broker's license or deny renewal of that license. The suspension
14 or denial shall remain in effect until the billed amount is paid or
15 the broker's right to renew a license has expired. The commissioner
16 may maintain an action for the recovery of the billed amount in
17 any court of competent jurisdiction.

18 (d) The report described in this section is exempted from any
19 requirement of public disclosure by paragraph (2) of subdivision
20 (d) of Section 6254 of the Government Code.

21 (e) The commissioner may waive the requirement to submit
22 certain information described in paragraphs (1) to (10), inclusive,
23 of subdivision (a) if the commissioner determines that this
24 information is duplicative of information required by the
25 Nationwide Mortgage Licensing System and Registry, pursuant
26 to Section 10166.08.

27 10166.08. Each mortgage loan originator shall submit reports
28 of condition to the Nationwide Mortgage Licensing System and
29 Registry reports of condition, and those reports shall be in the
30 form and shall contain information as the Nationwide Mortgage
31 Licensing System and Registry may require.

32 10166.09. The minimum standards for renewal of an
33 endorsement as a mortgage loan originator shall include the
34 following:

35 (a) The mortgage loan originator continues to meet the minimum
36 standards for obtaining an endorsement as a mortgage loan
37 originator.

38 (b) The mortgage loan originator satisfies the annual continuing
39 education requirements described in Section 10166.10.

- 1 10166.10. (a) A mortgage loan originator shall complete at
2 least eight hours of continuing education annually, which shall
3 include at least three hours relating to federal law and regulations,
4 two hours of ethics, which shall include instruction on fraud,
5 consumer protection, and fair lending issues, and two hours related
6 to lending standards for the nontraditional mortgage product
7 marketplace.
- 8 (b) For purposes of subdivision (a), continuing education
9 courses and course providers shall be reviewed and approved by
10 the commissioner and the Nationwide Mortgage Licensing System
11 and Registry.
- 12 (c) The commissioner shall have the authority to substitute any
13 of the courses described in subdivision (a) for the course
14 requirements of Section 10170.5, subject to a finding that the
15 course requirements in subdivision (a) and the course completion
16 standards in subdivision (g) of Section 10166.06 are substantially
17 equivalent to, and meet the intent of, Section 10170.5.
- 18 (d) Nothing in this section shall preclude any education course,
19 as approved by the commissioner and the Nationwide Mortgage
20 Licensing System and Registry, that is provided by the employer
21 of the mortgage loan originator or an entity that is affiliated with
22 the mortgage loan originator by an agency contract, or any
23 subsidiary or affiliate of the employer or entity.
- 24 (e) Continuing education may be offered either in a classroom,
25 online, or by any other means approved by the commissioner and
26 the Nationwide Mortgage Licensing System and Registry.
- 27 (f) A mortgage loan originator may only receive credit for a
28 continuing education course in the year in which the course is
29 taken.
- 30 (g) A mortgage loan originator may not take the same approved
31 course in the same or successive years to meet the requirements
32 of this section for continuing education.
- 33 (h) A mortgage loan originator who is an instructor of an
34 approved continuing education course may receive credit for his
35 or her own annual continuing education requirement at the rate
36 of two hours credit for every one hour taught.
- 37 (i) A person who successfully completes the education
38 requirements approved by the Nationwide Mortgage Licensing
39 System and Registry in any state other than California shall be

1 granted credit by the commissioner towards completion of
2 continuing education requirements in this state.

3 (j) A mortgage loan originator whose license endorsement
4 lapses, expires, or is suspended or revoked, and who wishes to
5 regain his or her license endorsement, shall complete continuing
6 education requirements for the last year in which the endorsement
7 was held, prior to issuance of a new or renewed endorsement.

8 10166.11. (a) A real estate broker who acts pursuant to Section
9 10131.1 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, shall keep documents and records
12 that will properly enable the commissioner to determine whether
13 the residential mortgage brokerage, servicing, and lending
14 functions performed by the broker comply with this division and
15 with all applicable rules and orders made by the commissioner.
16 These documents shall include, at a minimum, the documents
17 described in Section 10148. Upon request of the commissioner, a
18 real estate broker shall file an authorization for disclosure to the
19 commissioner of financial records of his or her licensed business
20 pursuant to Section 7473 of the Government Code.

21 (b) Notwithstanding subdivision (a) of Section 10148, the
22 business documents and records of real estate brokers described
23 in subdivision (a) and real estate salespersons acting under those
24 brokers are subject to inspection and examination or audit by the
25 commissioner, at his or her discretion, after reasonable notice.
26 That real estate broker or salesperson shall, upon request by the
27 commissioner and within the time period specified in that request,
28 allow the commissioner, or his or her authorized representative,
29 to inspect and copy any business documents and records. The
30 commissioner may suspend or revoke the license of the broker or
31 salesperson if he or she fails to produce documents or records
32 within the time period specified in the request.

33 (c) Inspection and examination or audit reports prepared by
34 the commissioner's duly designated representatives pursuant to
35 this section are not public records. Those reports may be disclosed
36 to the officers or directors of a licensee that is the subject of the
37 report for the purpose of corrective action. That disclosure shall
38 not operate as a waiver of the exemption specified in subdivision
39 (d) of Section 6254 of the Government Code.

1 10166.12. (a) As often as the commissioner deems necessary
2 and appropriate, the commissioner shall examine the affairs of
3 each real estate broker who is required to notify the commissioner
4 or obtain a license endorsement pursuant to Section 10166.02 for
5 compliance with this part. These examinations shall also include
6 a review of the affairs of all real estate brokers and real estate
7 salespersons acting under the supervision of each real estate
8 broker who is required to file reports with the department pursuant
9 to Section 10166.07. The commissioner shall appoint suitable
10 persons to perform these examinations. The commissioner and his
11 or her appointees may examine the books, records, and documents
12 of the licensee, and may examine the licensee's officers, directors,
13 employees, or agents under oath regarding the licensee's
14 operations. The commissioner may cooperate with any agency of
15 the state or federal government, other states, agencies, the Federal
16 National Mortgage Association, or the Federal Home Loan
17 Mortgage Corporation. The commissioner may accept an
18 examination conducted by one of these entities in place of an
19 examination by the commissioner under this section, unless the
20 commissioner determines that the examination does not provide
21 information necessary to enable the commissioner to fulfill his or
22 her responsibilities under this division.

23 (b) The commissioner may impose a penalty against a real estate
24 broker or real estate salesperson whose affairs are examined or
25 reviewed pursuant to subdivision (a) based on the findings of the
26 examination or review. The commissioner may suspend or revoke
27 the license or license endorsement of a real estate broker or real
28 estate salesperson who fails to pay that penalty. In addition, the
29 commissioner may bring an action in an appropriate court of this
30 state to collect payment of the penalty.

31 (c) Penalties collected pursuant to subdivision (b) 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 (d) The statement of the findings of an examination conducted
37 pursuant to this section shall belong to the commissioner and shall
38 not be disclosed to anyone other than the licensee, law enforcement
39 officials, or other state or federal regulatory agencies for further
40 investigation and enforcement. Reports required of licensees by

1 *the commissioner under this division and results of examinations*
2 *performed by the commissioner under this division are the property*
3 *of the commissioner.*

4 *10166.13. A real estate broker who acts pursuant to Section*
5 *10131.1 or subdivision (d) or (e) of Section 10131 and who makes,*
6 *arranges, or services loans secured by real property containing*
7 *one to four residential units shall make any special reports to the*
8 *commissioner that the commissioner may, from time to time,*
9 *require.*

10 *10166.14. A real estate broker shall notify the department when*
11 *he or she is no longer subject to this part. If a broker has already*
12 *made reports required by Sections 10166.07 and 10166.08 within*
13 *the year, he or she shall continue reports for that year, but shall*
14 *notify the department prior to the expiration of that year that he*
15 *or she will no longer be subject to this part in the succeeding year.*

16 *10166.15. (a) The commissioner shall regularly report*
17 *violations of this article, as well as enforcement actions taken*
18 *against any mortgage loan originator to whom an endorsement*
19 *has been issued, and enforcement actions taken against any*
20 *individual for failure to obtain an endorsement as a mortgage loan*
21 *originator, to the Nationwide Mortgage Licensing System and*
22 *Registry.*

23 *(b) The commissioner shall establish a process that may be used*
24 *by mortgage loan originators to challenge information entered*
25 *into the Nationwide Mortgage Licensing System and Registry by*
26 *the commissioner.*

27 *(c) The commissioner is authorized to promulgate regulations*
28 *specifying (1) the recordkeeping requirements that mortgage loan*
29 *originators shall satisfy and (2) the penalties that shall apply to*
30 *mortgage loan originators for violations of this article.*

31 *10166.16. (a) Except as otherwise provided in Section 1512*
32 *of the SAFE Act, the requirements under any federal or state law*
33 *regarding the privacy or confidentiality of any information or*
34 *material provided to the Nationwide Mortgage Licensing System*
35 *and Registry, and any privilege arising under federal or state law,*
36 *including the rules of any federal or state court, with respect to*
37 *that information or material, shall continue to apply to the*
38 *information or material after the information or material has been*
39 *disclosed to the Nationwide Mortgage Licensing System and*
40 *Registry. The information and material may be shared with all*

1 state and federal regulatory officials with mortgage industry
2 oversight authority without the loss of privilege or the loss of
3 confidentiality protections provided by federal or state law.

4 (b) For these purposes, the commissioner is authorized to enter
5 agreements or sharing arrangements with other governmental
6 agencies, the Conference of State Bank Supervisors, the American
7 Association of Residential Mortgage Regulators, or other
8 associations representing governmental agencies as established
9 by rule, regulation or order of the commissioner.

10 (c) Information or material that is subject to a privilege or
11 confidentiality under subdivision (a) shall not be subject to either
12 of the following:

13 (1) Disclosure under any federal or state law governing the
14 disclosure to the public of information held by an officer or an
15 agency of the federal government or the state.

16 (2) Subpoena or discovery, or admission into evidence, in any
17 private civil action or administrative process, unless with respect
18 to any privilege held by the Nationwide Mortgage Licensing System
19 and Registry with respect to the information or material, the person
20 to whom the information or material pertains waives, in whole or
21 in part, in the discretion of the person, that privilege.

22 (d) This section shall not apply with respect to the information
23 or material relating to the employment history of, and publicly
24 adjudicated disciplinary and enforcement actions against,
25 mortgage loan originators that is included in the Nationwide
26 Mortgage Licensing System and Registry for access by the public.

27 10166.17. In addition to any other duties imposed upon the
28 commissioner by law, the commissioner shall require mortgage
29 loan originators to be licensed and registered through the
30 Nationwide Mortgage Licensing System and Registry. In order to
31 carry out this requirement the commissioner is authorized to
32 participate in the Nationwide Mortgage Licensing System and
33 Registry. For this purpose, the commissioner may establish by
34 rule, regulation, or order, requirements as necessary, including,
35 but not limited to, the following:

36 (a) Background checks for the following:

37 (1) Criminal history through fingerprint or other databases.

38 (2) Civil or administrative records.

39 (3) Credit history.

1 (4) Any other information as deemed necessary by the
2 Nationwide Mortgage Licensing System and Registry.

3 (b) The payment of fees to apply for or renew licenses through
4 the Nationwide Mortgage Licensing System and Registry.

5 (c) The setting or resetting as necessary of renewal or reporting
6 dates.

7 (d) Requirements for amending or surrendering a license or
8 any other activities as the commissioner deems necessary for
9 participation in the Nationwide Mortgage Licensing System and
10 Registry.

11 SEC. 7. Section 10235.5 of the Business and Professions Code
12 is amended to read:

13 10235.5. (a) No real estate licensee or mortgage loan
14 originator shall place an advertisement disseminated primarily in
15 this state for a loan unless there is disclosed within the printed text
16 of that advertisement, or the oral text in the case of a radio or
17 television advertisement, the ~~license~~ Department of Real Estate
18 license number and the unique identifier assigned to that licensee
19 by the Nationwide Mortgage Licensing System and Registry under
20 which the loan would be made or arranged.

21 (b) "Mortgage loan originator," "unique identifier," and
22 "Nationwide Mortgage Licensing System and Registry" have the
23 meanings set forth in Section 10166.01.

24 SEC. 8. Section 10236.4 of the Business and Professions Code
25 is amended to read:

26 10236.4. (a) In compliance with Section 10235.5, every
27 licensed real estate broker shall also display his or her license
28 number on all advertisements where there is a solicitation for
29 borrowers or potential investors. *Every mortgage loan originator,*
30 *as defined in Section 10166.01, shall also display the unique*
31 *identifier assigned to that individual by the Nationwide Mortgage*
32 *Licensing System and Registry on all advertisements where there*
33 *is a solicitation for borrowers.*

34 (b) The disclosures required by Sections 10232.4 and 10240
35 shall include the licensee's license number, *the mortgage loan*
36 *originator's unique identifier, if applicable,* and the department's
37 license information telephone number.

38 ~~(e) This section shall become operative July 1, 1998.~~

1 (c) “Mortgage loan originator,” “unique identifier,” and
2 “Nationwide Mortgage Licensing System and Registry” have the
3 meanings set forth in Section 10166.01.

4 SEC. 9. Section 22012 is added to the Financial Code, to read:
5 22012. (a) “Branch office license” means a license to engage
6 in business as a finance lender or broker at a location other than
7 the location identified in a finance lender or broker license
8 application or amended application.

9 (b) “Depository institution” has the same meaning as in Section
10 3 of the Federal Deposit Insurance Act, and includes any credit
11 union.

12 (c) “Federal banking agencies” means the Board of Governors
13 of the Federal Reserve System, the Comptroller of the Currency,
14 the Director of the Office of Thrift Supervision, the National Credit
15 Union Administration, and the Federal Deposit Insurance
16 Corporation.

17 (d) “Nationwide Mortgage Licensing System and Registry”
18 means a mortgage licensing system developed and maintained by
19 the Conference of State Bank Supervisors and the American
20 Association of Residential Mortgage Regulators for the licensing
21 and registration of licensed mortgage loan originators.

22 (e) “Residential mortgage loan” means any loan primarily for
23 personal, family, or household use that is secured by a mortgage,
24 deed of trust, or other equivalent consensual security interest on
25 a dwelling, as defined in Section 103(v) of the federal Truth in
26 Lending Act, or residential real estate upon which is constructed
27 or intended to be constructed a dwelling. “Dwelling” means a
28 residential structure that contains one to four units, whether or
29 not that structure is attached to real property. The term includes
30 an individual condominium unit, cooperative unit, mobilehome,
31 or trailer, if it is used as a residence.

32 (f) “SAFE Act” means the federal Secure and Fair Enforcement
33 for Mortgage Licensing Act of 2008 (Public Law 110-289).

34 (g) “Unique identifier” means a number or other identifier
35 assigned by protocols established by the Nationwide Mortgage
36 Licensing System and Registry.

37 (h) For purposes of Sections 22109.2, 22109.3, and 22109.5,
38 “nontraditional mortgage product” means any mortgage product
39 other than a 30-year fixed rate mortgage.

1 SEC. 10. Section 22013 is added to the Financial Code, to
2 read:

3 22013. (a) “Mortgage loan originator” means an individual
4 who, for compensation or gain, or in the expectation of
5 compensation or gain, takes a residential mortgage loan
6 application or offers or negotiates terms of a residential mortgage
7 loan.

8 (b) Mortgage loan originator does not include any of the
9 following:

10 (1) An individual who performs purely administrative or clerical
11 tasks on behalf of a person meeting the definition of a mortgage
12 loan originator, except as provided in subdivision (c) of Section
13 22014. The term “administrative or clerical tasks” means the
14 receipt, collection, and distribution of information common for
15 the processing or underwriting of a loan in the mortgage industry
16 and communication with a consumer to obtain information
17 necessary for the processing or underwriting of a residential
18 mortgage loan, to the extent that the communication does not
19 include offering or negotiating loan rates or terms, or counseling
20 consumers about residential mortgage loan rates or terms.

21 (2) An individual who solely renegotiates terms for existing
22 mortgage loans held or serviced by his or her employer and who
23 does not otherwise act as a mortgage loan originator, unless the
24 United States Department of Housing and Urban Development or
25 a court of competent jurisdiction determines that the SAFE Act
26 requires such an employee to be licensed as a mortgage loan
27 originator under state laws implementing the SAFE Act.

28 (3) An individual that is solely involved in extensions of credit
29 relating to timeshare plans, as that term is defined in Section
30 101(53D) of Title 11 of the United States Code.

31 (4) An individual licensed as a mortgage loan originator
32 pursuant to the provisions of Article 2.1 (commencing with Section
33 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and
34 Professions Code and the SAFE Act.

35 (c) “Registered mortgage loan originator” means any individual
36 who is all of the following:

37 (1) Meets the definition of mortgage loan originator.

38 (2) Is an employee of a depository institution, a subsidiary that
39 is owned and controlled by a depository institution and regulated

1 by a federal banking agency, or an institution regulated by the
2 Farm Credit Administration.

3 (3) Is registered with, and maintains a unique identifier through,
4 the Nationwide Mortgage Licensing System and Registry.

5 (d) “Loan processor or underwriter” means an individual who
6 performs clerical or support duties as an employee at the direction
7 of, and subject to the supervision and instruction of, a mortgage
8 loan originator licensed by the state or a registered mortgage loan
9 originator.

10 SEC. 11. Section 22014 is added to the Financial Code, to
11 read:

12 22014. (a) A loan processor or underwriter who does not
13 represent to the public, through advertising or other means of
14 communicating or providing information, including the use of
15 business cards, stationery, brochures, signs, rate lists, or other
16 promotional items, that the individual can or will perform any of
17 the activities of a mortgage loan originator shall not be required
18 to be licensed as a mortgage loan originator.

19 (b) An individual engaging solely in loan processor or
20 underwriter activities shall not represent to the public, through
21 advertising or other means of communicating or providing
22 information including the use of business cards, stationery,
23 brochures, signs, rate lists, or other promotional items, that the
24 individual can or will perform any of the activities of a mortgage
25 loan originator.

26 (c) An independent contractor may not engage in the activities
27 of a loan processor or underwriter for a residential mortgage loan
28 unless the independent contractor loan processor or underwriter
29 obtains and maintains a mortgage loan originator license under
30 this division. Each independent contractor loan processor or
31 underwriter licensed as a mortgage loan originator shall have
32 and maintain a valid unique identifier issued by the Nationwide
33 Mortgage Licensing System and Registry.

34 SEC. 12. Section 22100 of the Financial Code is amended to
35 read:

36 22100. (a) No person shall engage in the business of a finance
37 lender or broker without obtaining a license from the commissioner.

38 (b) Every licensee engaging in the business of making or
39 brokering residential mortgage loans shall require that every
40 mortgage loan originator employed or compensated by that

1 licensee obtains and maintains a mortgage loan originator license
2 from the commissioner under this division or Division 20
3 (commencing with Section 50000), or has first obtained a license
4 endorsement from the Commissioner of Real Estate pursuant to
5 Article 2.1 (commencing with Section 10166.01) of Chapter 3 of
6 Part 1 of Division 4 of the Business and Professions Code.

7 (c) A finance lender or broker shall not employ a mortgage loan
8 originator whose license or license endorsement has lapsed.

9 (d) A finance lender or broker may not make or broker a
10 residential mortgage loan unless that loan is offered by, negotiated
11 by, or applied for through a licensed mortgage loan originator.

12 (e) Every licensee engaged in the business of making or
13 brokering residential mortgage loans and every mortgage loan
14 originator licensed under this division shall register with and
15 maintain a valid unique identifier issued by the Nationwide
16 Mortgage Licensing System and Registry.

17 SEC. 13. Section 22101 of the Financial Code is amended to
18 read:

19 22101. (a) An application for a license as a finance lender or
20 broker under this division shall be in the form and contain the
21 information that the commissioner may by rule require and shall
22 be filed upon payment of the fee specified in Section 22103.

23 (b) Notwithstanding any other provision of law, an applicant
24 who does not currently hold a license as a finance lender or broker
25 under this division shall furnish with his or her application, a full
26 set of fingerprints and related information for purposes of the
27 commissioner conducting a criminal history record check. The
28 commissioner shall obtain and receive criminal history information
29 from the Department of Justice and the Federal Bureau of
30 Investigation pursuant to Section 22101.5.

31 (c) Nothing in this section shall be construed to prevent a
32 licensee from engaging in the business of a finance lender through
33 a subsidiary corporation if the subsidiary corporation is licensed
34 pursuant to this division.

35 (d) For purposes of this section, “subsidiary corporation” means
36 a corporation that is wholly owned by a licensee.

37 (e) A new application shall not be required for a change in the
38 address of an existing location previously licensed under this
39 division. However, the licensee shall comply with the requirements
40 of Section 22153.

1 (f) Notwithstanding subdivisions (a) to (e), inclusive, the
2 commissioner may by rule require an application to be made
3 through the Nationwide Mortgage Licensing System and Registry,
4 and may require fees, fingerprints, financial statements, supporting
5 documents, changes of address, and any other information, and
6 amendments or modifications thereto, to be submitted in the same
7 manner.

8 SEC. 14. Section 22101.5 of the Financial Code is amended
9 to read:

10 22101.5. (a) The commissioner shall submit to the Department
11 of Justice fingerprint images and related information required by
12 the Department of Justice of all *finance lender and broker* license
13 candidates, as defined by subdivision (a) of Section 22101, for
14 purposes of obtaining information as to the existence and content
15 of a record of state or federal convictions, state or federal arrests,
16 and information as to the existence and content of a record of state
17 or federal arrests for which the Department of Justice establishes
18 that the person is free on bail or on his or her own recognizance
19 pending trial or appeal.

20 (b) When received, the Department of Justice shall forward to
21 the Federal Bureau of Investigation requests for federal summary
22 criminal history information received pursuant to this section. The
23 Department of Justice shall review the information returned from
24 the Federal Bureau of Investigation and compile and disseminate
25 a response to the commissioner.

26 (c) The Department of Justice shall provide a response to the
27 commissioner pursuant to paragraph (1) of subdivision (p) of
28 Section 11105 of the Penal Code.

29 (d) The commissioner shall request from the Department of
30 Justice subsequent arrest notification service, as provided pursuant
31 to Section 11105.2 of the Penal Code, for license candidates
32 described in subdivision (a).

33 (e) The Department of Justice shall charge a fee sufficient to
34 cover the costs of processing the requests pursuant to this section.

35 ~~(f) This section shall become operative on July 1, 2006.~~

36 (f) Notwithstanding subdivisions (a) to (e), inclusive, the
37 commissioner may by rule require fingerprints submitted by an
38 applicant to be submitted to the Nationwide Mortgage Licensing
39 System and Registry in addition to the Department of Justice.

1 *SEC. 15. Section 22102 of the Financial Code is amended to*
2 *read:*

3 22102. (a) A *finance lender or broker* licensee seeking to
4 engage in business at a new location shall submit an application
5 ~~to the commissioner by certified mail, return receipt requested, for~~
6 *a branch office license to the commissioner* at least 10 days before
7 engaging in business at a new location and pay the fee required
8 by Section 22103. *The commissioner may require an applicant*
9 *seeking to engage in business at a new location to submit its*
10 *application, or parts thereof, through the Nationwide Mortgage*
11 *Licensing System and Registry.*

12 ~~(b) The commissioner, by regulation, shall adopt a form for the~~
13 ~~application required by this section. The application shall contain~~
14 ~~the following information:~~

15 ~~(1) The address of the new location.~~

16 ~~(2) Information on the person responsible for the lending activity~~
17 ~~at the new location.~~

18 ~~(3) Any additional information required by the commissioner.~~

19 ~~(e)~~

20 (b) The licensee may engage in business at the new location 10
21 days after the date of mailing the application to engage in business
22 at that location *submission of a branch office application.*

23 ~~(d)~~

24 (c) (1) The commissioner shall approve or deny the person
25 responsible for the lending activity at the new location in
26 accordance with Section 22109, and shall notify the licensee of
27 this decision within 90 days of the date of receipt of the application.

28 (2) If the commissioner denies the application, the licensee shall,
29 within 10 days of the date of receipt of notification of the
30 commissioner's denial, submit a new application to the
31 commissioner designating a different person responsible for the
32 lending activity at the new location. The commissioner shall
33 approve or deny the different person as provided in paragraph (1).

34 ~~(e)~~

35 (d) A licensee shall not engage in business at a new location in
36 a name other than a name approved by the commissioner.

37 ~~(f)~~

38 (e) The commissioner may adopt regulations to implement the
39 requirements of this section.

40 ~~(g)~~

1 (f) A *branch office* license to engage in business at a new
2 location shall be issued in accordance with this section. A change
3 of street address of a place of business designated in a license shall
4 be made in accordance with Section 22153 and shall not constitute
5 a new location subject to the requirements of this section.

6 *SEC. 16. Section 22103 of the Financial Code is amended to*
7 *read:*

8 22103. At the time of filing the application *for a finance lender,*
9 *broker, or branch office license,* the applicant shall pay to the
10 commissioner the sum of one hundred dollars (\$100) as a fee for
11 investigating the application, plus the cost of fingerprint processing
12 and the criminal history record check under Section 22101.5, and
13 two hundred dollars (\$200) as an application fee. The investigation
14 fee, including the amount for the criminal history record check,
15 and the application fee are not refundable if an application is denied
16 or withdrawn.

17 *SEC. 17. Section 22104 of the Financial Code is amended to*
18 *read:*

19 22104. (a) The applicant shall file with the application *for a*
20 *finance lender or broker license* financial statements prepared in
21 accordance with generally accepted accounting principles and
22 acceptable to the commissioner that indicate a net worth of at least
23 twenty-five thousand dollars (\$25,000). ~~A-Except as provided in~~
24 ~~subdivision (b),~~ a licensee shall maintain a net worth of at least
25 twenty-five thousand dollars (\$25,000) at all times.

26 (b) *A licensee employing one or more mortgage loan originators*
27 *shall continuously maintain a minimum net worth of at least two*
28 *hundred fifty thousand dollars (\$250,000).*

29 (c) *The commissioner may promulgate rules or regulations with*
30 *respect to the requirements for minimum net worth, as are*
31 *necessary to accomplish the purposes of this division and comply*
32 *with the SAFE Act.*

33 *SEC. 18. Section 22105.1 is added to the Financial Code, to*
34 *read:*

35 22105.1. (a) *An applicant for a mortgage loan originator*
36 *license shall apply by submitting the uniform form prescribed for*
37 *such purpose by the Nationwide Mortgage Licensing System and*
38 *Registry. The commissioner may require the submission of*
39 *additional information or supporting documentation to the*
40 *department.*

1 (b) Section 461 of the Business and Professions Code shall not
2 be applicable to the Department of Corporations when using a
3 national uniform application adopted or approved for use by the
4 Nationwide Mortgage Licensing System and Registry in connection
5 with the SAFE Act.

6 (c) In connection with an application for a license as a mortgage
7 loan originator, the applicant shall, at a minimum, furnish to the
8 Nationwide Mortgage Licensing System and Registry information
9 concerning the applicant's identity, including the following:

10 (1) Fingerprint images and related information, for purposes
11 of performing a federal, or both a state and federal, criminal
12 history background check.

13 (2) Personal history and experience in a form prescribed by the
14 Nationwide Mortgage Licensing System and Registry, including
15 the submission of authorization for the Nationwide Mortgage
16 Licensing System and Registry and the commissioner to obtain
17 both of the following:

18 (A) An independent credit report obtained from a consumer
19 reporting agency.

20 (B) Information related to any administrative, civil, or criminal
21 findings by any governmental jurisdiction.

22 (d) The commissioner may ask the Nationwide Mortgage
23 Licensing System and Registry to obtain state criminal history
24 background check information on applicants described in
25 subdivision (a) using the procedures set forth in subdivisions (e)
26 and (f).

27 (e) If the Nationwide Mortgage Licensing System and Registry
28 electronically submits fingerprint images and related information,
29 as required by the Department of Justice, for an applicant for a
30 mortgage loan originator license, for the purposes of obtaining
31 information as to the existence and content of a record of state
32 convictions and state arrests and to the existence and content of
33 a record of state arrests for which the Department of Justice
34 establishes that the person is free on bail or on his or her
35 recognizance pending trial or appeal, the Department of Justice
36 shall provide an electronic response to the Nationwide Mortgage
37 Licensing System and Registry pursuant to paragraph (1) of
38 subdivision (p) of Section 11105 of the Penal Code, and shall
39 provide the same electronic response to the commissioner.

1 (f) *The Nationwide Mortgage Licensing System and Registry*
 2 *may request from the Department of Justice subsequent arrest*
 3 *notification service, as provided pursuant to Section 11105.2 of*
 4 *the Penal Code, for persons described in subdivision (a). The*
 5 *Department of Justice shall provide the same electronic response*
 6 *to the commissioner.*

7 (g) *The Department of Justice shall charge a fee sufficient to*
 8 *cover the cost of processing the requests described in this section.*

9 SEC. 19. *Section 22105.2 is added to the Financial Code, to*
 10 *read:*

11 22105.2. (a) *The commissioner is authorized to establish*
 12 *relationships or contracts with the Nationwide Mortgage Licensing*
 13 *System and Registry or other entities designated by the Nationwide*
 14 *Mortgage Licensing System and Registry to collect and maintain*
 15 *records and process transaction fees or other fees related to*
 16 *licensees or other persons subject to this division.*

17 (b) *For the purpose of participating in the Nationwide Mortgage*
 18 *Licensing System and Registry, the commissioner is authorized to*
 19 *waive or modify, in whole or in part, by rule, regulation, or order,*
 20 *any or all of the requirements of this division and to establish new*
 21 *requirements as reasonably necessary to participate in the*
 22 *Nationwide Mortgage Licensing System and Registry.*

23 (c) *The commissioner may use the Nationwide Mortgage*
 24 *Licensing System and Registry as a channeling agent for requesting*
 25 *information from, and distributing information to, the Department*
 26 *of Justice or any governmental agency.*

27 (d) *The commissioner may use the Nationwide Mortgage*
 28 *Licensing System and Registry as a channeling agent for requesting*
 29 *and distributing information to and from any source so directed*
 30 *by the commissioner.*

31 (e) *The commissioner shall establish a process where applicants*
 32 *and licensees may challenge information entered into the*
 33 *Nationwide Mortgage Licensing System and Registry by the*
 34 *commissioner.*

35 SEC. 20. *Section 22105.3 is added to the Financial Code, to*
 36 *read:*

37 22105.3. (a) *Except as otherwise provided in Section 1512 of*
 38 *the SAFE Act, the requirements under any federal or state law*
 39 *regarding the privacy or confidentiality of any information or*
 40 *material provided to the Nationwide Mortgage Licensing System*

1 *and Registry, and any privilege arising under federal or state law,*
2 *including the rules of any federal or state court, with respect to*
3 *that information or material, shall continue to apply to the*
4 *information or material after the information or material has been*
5 *disclosed to the Nationwide Mortgage Licensing System and*
6 *Registry. The information and material may be shared with all*
7 *state and federal regulatory officials with mortgage industry*
8 *oversight authority without the loss of privilege or the loss of*
9 *confidentiality protections provided by federal or state law.*

10 *(b) For these purposes, the commissioner is authorized to enter*
11 *agreements or share arrangements with other governmental*
12 *agencies, the Conference of State Bank Supervisors, the American*
13 *Association of Residential Mortgage Regulators, or other*
14 *associations representing governmental agencies as established*
15 *by rule, regulation, or order of the commissioner.*

16 *(c) Information or material that is subject to a privilege or*
17 *confidentiality under subdivision (a) shall not be subject to the*
18 *following:*

19 *(1) Disclosure under any federal or state law governing the*
20 *disclosure to the public of information held by an officer or an*
21 *agency of the federal government or the state.*

22 *(2) Subpoena or discovery, or admission into evidence, in any*
23 *private civil action or administrative process, unless with respect*
24 *to any privilege held by the Nationwide Mortgage Licensing System*
25 *and Registry with respect to the information or material, the person*
26 *to whom the information or material pertains waives, in whole or*
27 *in part, in the discretion of the person, that privilege.*

28 *(3) This section shall not apply with respect to the information*
29 *or material relating to the employment history of, and publicly*
30 *adjudicated disciplinary and enforcement actions against,*
31 *mortgage loan originators that is included in the Nationwide*
32 *Mortgage Licensing System and Registry for access by the public.*

33 *SEC. 21. Section 22105.4 is added to the Financial Code, to*
34 *read:*

35 *22105.4. The commissioner shall regularly report violations*
36 *of this division, as well as enforcement actions and other relevant*
37 *information, to the Nationwide Mortgage Licensing System and*
38 *Registry, to the extent that information is public record.*

39 *SEC. 22. Section 22106 of the Financial Code is amended to*
40 *read:*

1 22106. (a) The *finance lender or broker* license shall state the
2 name of the licensee, and if the licensee is a partnership, the names
3 of its general partners, and if a corporation or an association, the
4 date and place of its incorporation or organization, and the address
5 of the licensee's principal business location. On the approval and
6 licensing of a location pursuant to Section 22101 or 22102, the
7 commissioner shall issue an original license endorsed to show the
8 address of the authorized location and, if applicable, the name of
9 the subsidiary corporation licensed to operate the location. The
10 license shall state whether the licensee is licensed as a finance
11 lender or a broker.

12 (b) ~~An application for a license for a business location outside~~
13 ~~this state may be issued if the licensee agrees in writing in the~~
14 ~~license application to do, at the option of the applicant, one of the~~
15 ~~shall constitute an agreement by the applicant to do all of the~~
16 following:

17 (1) Make the licensee's books, accounts, papers, records, and
18 files available to the commissioner or the commissioner's
19 representatives in this state.

20 (2) Pay the reasonable expenses for travel, meals, and lodging
21 of the commissioner or the commissioner's representatives incurred
22 during any investigation or examination made at the licensee's
23 location outside this state.

24 A licensee located outside this state is not required to maintain
25 books and records regarding licensed loans separate from those
26 for other loans if the licensed loans can be readily identified.

27 SEC. 23. Section 22107 of the *Financial Code* is amended to
28 read:

29 22107. (a) Each *finance lender or broker* licensee shall pay
30 to the commissioner its pro rata share of all costs and expenses,
31 *including the costs and expenses associated with the licensing of*
32 *mortgage loan originators it employs*, reasonably incurred in the
33 administration of this division, as estimated by the commissioner,
34 for the ensuing year and any deficit actually incurred or anticipated
35 in the administration of the program in the year in which the
36 assessment is made. The pro rata share shall be the proportion that
37 a licensee's gross income bears to the aggregate gross income of
38 all licensees as shown by the annual financial reports to the
39 commissioner, for the costs and expenses remaining after the
40 amount assessed pursuant to subdivision (c).

1 (b) On or before the 30th day of ~~May~~ *November* in each year,
2 the commissioner shall notify each licensee ~~by mail~~ of the amount
3 assessed and levied against it and that amount shall be paid ~~within~~
4 ~~20 days thereafter.~~ *by December 31*. If payment is not made ~~within~~
5 ~~20 days,~~ *by December 31*, the commissioner shall assess and collect
6 a penalty, in addition to the assessment, of 1 percent of the
7 assessment for each month or part of a month that the payment is
8 delayed or withheld.

9 (c) In the levying and collection of the assessment, a licensee
10 shall neither be assessed for nor be permitted to pay less than two
11 hundred fifty dollars (\$250) per licensed location per year.

12 (d) If a licensee fails to pay the assessment on or before the ~~30th~~
13 ~~31st~~ day of ~~June~~ *January* following the day upon which payment
14 is due, the commissioner may by order summarily suspend or
15 revoke the certificate issued to the licensee. If, after an order is
16 made, a request for hearing is filed in writing within 30 days, and
17 a hearing is not held within 60 days thereafter, the order is deemed
18 rescinded as of its effective date. During any period when its
19 certificate is revoked or suspended, a ~~licensee~~ *finance lender or*
20 *broker licensee and any mortgage loan originator licensee*
21 *employed by the finance lender or broker* shall not conduct business
22 pursuant to this division except as may be permitted by order of
23 the commissioner. However, the revocation, suspension, or
24 surrender of a certificate shall not affect the powers of the
25 commissioner as provided in this division.

26 (e) *The commissioner shall, by rule, establish the timelines,*
27 *fees, and assessments applicable to applicants for original*
28 *mortgage loan originator licenses, license renewals, and license*
29 *changes under this division.*

30 (f) *Notwithstanding subdivisions (a) to (e), inclusive, the*
31 *commissioner may by rule require licensees to pay assessments*
32 *through the Nationwide Mortgage Licensing System and Registry.*

33 *SEC. 24. Section 22108 of the Financial Code is amended to*
34 *read:*

35 22108. (a) The commissioner may by ~~regulation~~ *rule* require
36 licensees to file, at the times that he or she may specify, the
37 information that he or she may reasonably require regarding any
38 changes in the information provided in any application filed
39 pursuant to this division.

1 (b) *The commissioner may by rule require a licensee to file*
2 *information through the Nationwide Mortgage Licensing System*
3 *and Registry.*

4 *SEC. 25. Section 22109 of the Financial Code is amended to*
5 *read:*

6 22109. (a) Upon reasonable notice and opportunity to be heard,
7 the commissioner may deny the application for a *finance leader*
8 *or broker license* for any of the following reasons:

9 (1) A false statement of a material fact has been made in the
10 application.

11 (2) The applicant or an officer, director, general partner, person
12 responsible for the applicant's lending activities in this state, or
13 person owning or controlling, directly or indirectly, 10 percent or
14 more of the outstanding interests or equity securities of the
15 applicant has, within the last 10 years, been convicted of or pleaded
16 nolo contendere to a crime, or committed an act involving
17 dishonesty, fraud, or deceit, if the crime or act is substantially
18 related to the qualifications, functions, or duties of a person
19 engaged in business in accordance with this division.

20 (3) The applicant or an officer, director, general partner, person
21 responsible for the applicant's lending activities in this state, or
22 person owning or controlling, directly or indirectly, 10 percent or
23 more of the outstanding interests or equity securities of the
24 applicant has violated any provision of this division or the rules
25 thereunder or any similar regulatory scheme of the State of
26 California or a foreign jurisdiction.

27 (4) *The applicant employs a mortgage loan originator who is*
28 *not licensed, or has not initiated an application to become licensed,*
29 *pursuant to this division.*

30 (b) The application shall be considered withdrawn within the
31 meaning of this section if the applicant fails to respond to a written
32 notification of a deficiency in the application within 90 days of
33 the date of the notification.

34 (c) The commissioner shall, within 60 days from the filing of
35 a full and complete application for a license with the fees, either
36 issue a license or file a statement of issues prepared in accordance
37 with Chapter 5 (commencing with Section 11500) of Part 1 of
38 Division 3 of Title 2 of the Government Code.

39 *SEC. 26. Section 22109.1 is added to the Financial Code, to*
40 *read:*

1 22109.1. *The commissioner shall not issue a mortgage loan*
2 *originator license unless the commissioner makes, at a minimum,*
3 *the following findings:*

4 (a) *The applicant has never had a mortgage loan originator*
5 *license revoked in any governmental jurisdiction, except that a*
6 *subsequent formal vacation of a revocation shall not be deemed*
7 *a revocation.*

8 (b) *The applicant has not been convicted of, or pled guilty or*
9 *nolo contendere to, a felony in a domestic, foreign, or military*
10 *court, as follows:*

11 (1) *During the seven-year period preceding the date of the*
12 *application for licensing and registration.*

13 (2) *At any time preceding the date of application, if the felony*
14 *involved an act of fraud, dishonesty, or a breach of trust, or money*
15 *laundering.*

16 (3) *Provided that any pardon of a conviction shall not be a*
17 *conviction for purposes of this subdivision.*

18 (c) *The applicant has demonstrated such financial responsibility,*
19 *character, and general fitness as to command the confidence of*
20 *the community and to warrant a determination that the mortgage*
21 *loan originator will operate honestly, fairly, and efficiently within*
22 *the purposes of this division.*

23 (d) *The applicant has completed the prelicensing education*
24 *requirement described in Section 22109.2.*

25 (e) *The applicant has passed a written test that meets the test*
26 *requirement described in Section 22109.3.*

27 (f) *The applicant is employed by, and subject to the supervision*
28 *of, a finance lender or broker that has obtained a license from the*
29 *commissioner pursuant to this division.*

30 SEC. 27. *Section 22109.2 is added to the Financial Code, to*
31 *read:*

32 22109.2. (a) *An applicant for a mortgage loan originator*
33 *license shall complete at least 20 hours of education approved in*
34 *accordance with subdivision (b). The education shall include at*
35 *least the following:*

36 (1) *Three hours of instruction on federal law and regulations.*

37 (2) *Three hours of ethics, which shall include instruction on*
38 *fraud, consumer protection, and fair lending issues.*

39 (3) *Two hours of training related to lending standards for the*
40 *nontraditional mortgage product marketplace.*

1 (b) For purposes of subdivision (a), prelicensing education
2 courses shall be reviewed and approved by the Nationwide
3 Mortgage Licensing System and Registry. Review and approval
4 of a prelicensing education course shall include review and
5 approval of the course provider.

6 (c) Nothing in this section shall preclude any prelicensing
7 education course, as approved by the Nationwide Mortgage
8 Licensing System and Registry, that is provided by the employer
9 of the applicant or an entity that is affiliated with the applicant by
10 an agency contract, or any subsidiary or affiliate of the employer
11 or entity.

12 (d) Prelicensing education may be offered either in a classroom,
13 online, or by any other means approved by the Nationwide
14 Mortgage Licensing System and Registry.

15 (e) The prelicensing education requirements approved by the
16 Nationwide Mortgage Licensing System and Registry for any state
17 other than California shall be accepted as credit toward completion
18 of prelicensing education requirements in California.

19 (f) An individual previously licensed under this division as a
20 mortgage loan originator, applying to be licensed again, shall
21 prove that he or she has completed all of the continuing education
22 requirements for the year in which the license was last held.

23 SEC. 28. Section 22109.3 is added to the Financial Code, to
24 read:

25 22109.3. (a) An applicant for a mortgage loan originator
26 license shall pass a qualified written test developed by the
27 Nationwide Mortgage Licensing System and Registry and
28 administered by a test provider approved by the Nationwide
29 Mortgage Licensing System and Registry.

30 (b) A written test shall not be treated as a qualified written test
31 for purposes of subdivision (a) unless the test adequately measures
32 the applicant's knowledge and comprehension in appropriate
33 subject areas, including all of the following:

34 (1) Ethics.

35 (2) Federal law and regulation relating to mortgage origination.

36 (3) State law and regulation relating to mortgage origination.

37 (4) Federal and state law and regulation, including instruction
38 on fraud, consumer protection, the nontraditional mortgage
39 marketplace, and fair lending issues.

1 (c) *Nothing in this section shall prohibit a test provider approved*
2 *by the Nationwide Mortgage Licensing System and Registry from*
3 *providing a test at the location of the employer of the applicant or*
4 *the location of any subsidiary or affiliate of the employer of the*
5 *applicant, or the location of any entity with which the applicant*
6 *holds an exclusive arrangement to conduct the business of a*
7 *mortgage loan originator.*

8 (d) *An individual shall not be considered to have passed a*
9 *qualified written test administered pursuant to this section unless*
10 *the individual achieves a test score of not less than 75 percent of*
11 *correct answers to questions.*

12 (e) *An individual who fails the qualified written test may retake*
13 *the test up to three consecutive times, although at least 30 days*
14 *shall pass between each retesting.*

15 (f) *An applicant who fails three consecutive retests shall wait*
16 *at least six months before retesting.*

17 (g) *A licensed mortgage loan originator who fails to maintain*
18 *a valid license for a period of five years or longer shall retake the*
19 *test, not taking into account any time during which the individual*
20 *is a registered mortgage loan originator.*

21 *SEC. 29. Section 22109.4 is added to the Financial Code, to*
22 *read:*

23 22109.4. (a) *A mortgage loan originator shall comply with*
24 *the requirements of this section on or before December 31 of every*
25 *year.*

26 (b) *The minimum standards for license renewal for a mortgage*
27 *loan originator shall include the following:*

28 (1) *The mortgage loan originator continues to meet the minimum*
29 *standards for license issuance under Section 22109.1.*

30 (2) *The mortgage loan originator has satisfied the annual*
31 *continuing education requirements described in Section 22109.5.*

32 (3) *The mortgage loan originator, or the finance lender or*
33 *broker employing the mortgage loan originator, has paid all*
34 *required fees for renewal of the license as provided in Section*
35 *22107.*

36 (c) *The license of a mortgage loan originator failing to satisfy*
37 *the minimum standards for license renewal shall expire at midnight*
38 *on January 31, except as provided in subdivision (h) of Section*
39 *22109.5. The commissioner may adopt procedures for the*
40 *reinstatement of expired licenses consistent with the standards*

1 established by the Nationwide Mortgage Licensing System and
2 Registry.

3 SEC. 30. Section 22109.5 is added to the Financial Code, to
4 read:

5 22109.5. (a) A licensed mortgage loan originator shall
6 complete at least eight hours of continuing education approved in
7 accordance with subdivision (b). The continuing education shall
8 include at least the following:

9 (1) Three hours of instruction on federal law and regulations.

10 (2) Two hours of ethics, which shall include instruction on fraud,
11 consumer protection, and fair lending issues.

12 (3) Two hours of training related to lending standards for the
13 nontraditional mortgage product marketplace.

14 (b) For purposes of this section, continuing education courses
15 shall be reviewed and approved by the Nationwide Mortgage
16 Licensing System and Registry. Review and approval of a
17 continuing education course shall include review and approval of
18 the course provider.

19 (c) Nothing in this section shall preclude any education course,
20 as approved by the Nationwide Mortgage Licensing System and
21 Registry, that is provided by the employer of the mortgage loan
22 originator or an entity which is affiliated with the mortgage loan
23 originator by an agency contract, or any subsidiary or affiliate of
24 the employer or entity.

25 (d) Continuing education may be offered in a classroom, online,
26 and by any other means approved by the Nationwide Mortgage
27 Licensing System and Registry.

28 (e) Except as provided in subdivision (i), a licensed mortgage
29 loan originator:

30 (1) May only receive credit for a continuing education course
31 in the year in which the course is taken.

32 (2) May not take the same approved course in the same or
33 successive years to meet the annual requirements for continuing
34 education.

35 (f) A licensed mortgage loan originator who is an approved
36 instructor of an approved continuing education course may receive
37 credit for the licensed mortgage loan originator's own annual
38 continuing education requirement at the rate of two hours credit
39 for every one hour taught.

1 (g) A person who has successfully completed continuing
2 education requirements approved by the Nationwide Mortgage
3 Licensing System and Registry for any state other than California
4 shall be granted credit toward completion of continuing education
5 requirements in California.

6 (h) A licensed mortgage loan originator who subsequently
7 becomes unlicensed shall complete the continuing education
8 requirements for the last year in which the license was held prior
9 to issuance of a new or renewed license.

10 (i) A person meeting the requirements of paragraphs (1) and
11 (3) of subdivision (b) of Section 22109.4 may correct any deficiency
12 in continuing education as established by rule or regulation of the
13 commissioner.

14 SEC. 31. Section 22109.6 is added to the Financial Code, to
15 read:

16 22109.6. In addition to any other duties imposed upon the
17 commissioner by law, the commissioner shall require mortgage
18 loan originators to be licensed and registered through the
19 Nationwide Mortgage Licensing System and Registry. In order to
20 carry out this requirement, the commissioner is authorized to
21 participate in the Nationwide Mortgage Licensing System and
22 Registry. For this purpose, the commissioner may establish by
23 rule, regulation, or order, requirements as necessary, including,
24 but not limited to, the following:

25 (a) Background information for the following:

26 (1) Criminal history through fingerprint or other databases.

27 (2) Civil or administrative records.

28 (3) Credit history.

29 (4) Any other information as deemed necessary by the
30 Nationwide Mortgage Licensing System and Registry.

31 (b) The payment of fees to apply for or renew licenses through
32 the Nationwide Mortgage Licensing System and Registry.

33 (c) The setting or resetting as necessary of renewal or reporting
34 dates.

35 (d) Requirements for amending or surrendering a license or
36 any other activities as the commissioner deems necessary for
37 participation in the Nationwide Mortgage Licensing System and
38 Registry.

39 SEC. 32. Section 22112 of the Financial Code is amended to
40 read:

1 22112. (a) A licensee shall maintain a surety bond in
2 accordance with this subdivision in ~~the~~ *a minimum* amount of
3 twenty-five thousand dollars (\$25,000). The bond shall be payable
4 to the commissioner and issued by an insurer authorized to do
5 business in this state. An original surety bond, including any and
6 all riders and endorsements executed subsequent to the effective
7 date of the bond, shall be filed with the commissioner within 10
8 days of execution. For licensees with multiple licensed locations,
9 only one surety bond is required. The bond shall be used for the
10 recovery of expenses, fines, and fees levied by the commissioner
11 in accordance with this division or for losses or damages incurred
12 by borrowers or consumers as the result of a licensee's
13 noncompliance with the requirements of this division.

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

21 (c) *The commissioner shall by rule require a higher bond*
22 *amount for a licensee employing one or more mortgage loan*
23 *originators, based on the dollar amount of residential mortgage*
24 *loans originated by that licensee and any mortgage loan*
25 *originators employed by that licensee. Every mortgage loan*
26 *originator employed by the licensee shall be covered by the surety*
27 *bond.*

28 SEC. 33. *Section 22151 of the Financial Code is amended to*
29 *read:*

30 22151. (a) ~~A license,~~ *finance lender license, broker license,*
31 *and the license of every mortgage loan originator employed by a*
32 *lender or finance broker,* along with any currently effective order
33 of the commissioner approving a different name pursuant to Section
34 22155, shall be conspicuously posted in the place of business
35 authorized by the license.

36 (b) A license is not transferable or assignable. A license issued
37 to a partnership or a limited partnership is not transferred or
38 assigned within the meaning of this section by the death,
39 withdrawal, or admission of a partner, general partner, or limited

1 partner, unless the death, withdrawal, or admission dissolves the
2 partnership to which the license was issued.

3 *SEC. 34. Section 22152 of the Financial Code is amended to*
4 *read:*

5 22152. A *finance lender or broker* licensee shall maintain only
6 one place of business under a duplicate or original license issued
7 pursuant to Section 22101 or 22102. The commissioner may issue
8 more than one license to the same licensee upon compliance with
9 all the provisions of this division governing an original issuance
10 of a license.

11 *SEC. 35. Section 22153 of the Financial Code is amended to*
12 *read:*

13 22153. (a) If a ~~licensee~~ *desires finance lender or broker*
14 *licensee seeks* to change its place of business to a street address
15 other than that designated in its license, the licensee shall ~~give~~
16 ~~written~~ *provide* notice to the commissioner ~~on a form provided by~~
17 ~~the commissioner~~ at least 10 days prior to the change. The
18 commissioner shall ~~then provide a written approval of the change~~
19 ~~and the date of the approval.~~ *notify the licensee within 10 days if*
20 *the commissioner disapproves the change, and if the commissioner*
21 *does not notify the licensee of disapproval within 10 days, the*
22 *change in address shall be deemed approved. The commissioner*
23 *may require an applicant to submit its application to change its*
24 *place of business through the Nationwide Mortgage Licensing*
25 *System and Registry.*

26 (b) If notice is not given at least 10 days prior to the change of
27 a street address of a place of business, as required by subdivision
28 (a), or notice is not given at least 10 days prior to engaging in
29 business at a new location, as required by Section 22102, the
30 commissioner may assess a civil or administrative penalty on the
31 licensee not to exceed five hundred dollars (\$500).

32 *SEC. 36. Section 22154 of the Financial Code is amended to*
33 *read:*

34 22154. (a) No licensee shall conduct the business of making
35 loans under this division within any office, room, or place of
36 business in which any other business is solicited or engaged in, or
37 in association or conjunction therewith, except as is authorized in
38 writing by the commissioner upon the commissioner's finding that
39 the character of the other business is such that the granting of the
40 authority would not facilitate evasions of this division or of the

1 rules and regulations made pursuant to this division. An
2 authorization once granted remains in effect until revoked by the
3 commissioner. *The commissioner may authorize the other business*
4 *through the Nationwide Mortgage Licensing System and Registry.*

5 (b) The products or services of an affiliated corporation of the
6 licensee that is a supervised financial institution, or a parent or
7 subsidiary of a supervised financial institution that is an affiliate
8 of the licensee, may be provided, offered, or sold at the licensed
9 location of the licensee without authorization by the commissioner
10 pursuant to subdivision (a) if (1) the activity is not prohibited by,
11 or in violation of, the laws applicable to the affiliate or supervised
12 financial institution, and (2) the products and services are not
13 offered and sold in a manner that restricts the ability of the
14 borrower or customer to individually select or reject a product or
15 service that is offered.

16 (c) The following definitions govern the construction of this
17 section:

18 (1) “Affiliated” or “affiliate” means the following: A corporation
19 is an affiliate of, or a corporation is affiliated with, another
20 specified corporation if it directly, or indirectly through one or
21 more intermediaries, controls, is controlled by, or is under common
22 control with, the other specified corporation.

23 (2) “Supervised financial institution” means any commercial
24 bank, industrial bank, credit card bank, trust company, savings
25 and loan association, savings bank, credit union, California finance
26 lender, residential mortgage lender or servicer, or insurer, provided
27 that the institution is subject to supervision by an official or agency
28 of this state or of the United States.

29 *SEC. 37. Section 22155 of the Financial Code is amended to*
30 *read:*

31 22155. No *finance lender, broker, or mortgage loan originator*
32 licensee shall transact the business licensed or make any loan
33 provided for by this division under any other name or at any other
34 place of business than that named in the license except pursuant
35 to a currently effective written order of the commissioner
36 authorizing the other name or other place of business. The
37 commissioner’s order, while effective, shall be deemed to amend
38 the original license issued pursuant to ~~Section 22106~~. *22015 or*
39 *22109.1*. Notwithstanding any provision of this section, a licensee
40 may make any loan and engage in any other business provided for

1 by this division, other than the business described in subdivision
2 (b) of Section 22154, at a place other than the licensed location
3 under either of the following conditions:

4 (a) The borrower requests, either orally or in writing, that a loan
5 be initiated or made at a location other than the licensee's licensed
6 location. The use by the licensee of a preprinted solicitation form
7 returned to the licensee by the borrower shall not constitute a
8 request by the borrower that a loan be initiated or made at a
9 location other than the licensee's licensed location.

10 (b) The licensee makes a solicitation or advertises for, or makes
11 an offer of, a loan displayed on "home pages" or similar methods
12 by the licensee on the Internet, the World Wide Web, or similar
13 proprietary or common carrier electronic systems, and the
14 prospective borrower may transmit information over these
15 electronic systems to the licensee in connection with the licensee's
16 offer to make a loan.

17 *SEC. 38. Section 22156 of the Financial Code is amended to*
18 *read:*

19 22156. ~~Licensees—Finance lender, broker, and mortgage loan~~
20 ~~originator licensees~~ shall keep and use in their business, books,
21 accounts, and records which will enable the commissioner to
22 determine if the licensee is complying with the provisions of this
23 division and with the rules and regulations made by the
24 commissioner. On any loan secured by real property in which loan
25 proceeds were disbursed to an independent escrowholder, the
26 licensee shall retain records and documents as set forth by rules
27 of the commissioner adopted pursuant to Section 22150. Upon
28 request of the commissioner, licensees shall file an authorization
29 for disclosure to the commissioner of financial records of the
30 licensed business pursuant to Section 7473 of the Government
31 Code.

32 *SEC. 39. Section 22157 of the Financial Code is amended to*
33 *read:*

34 22157. ~~Licensees—Finance lender, broker, and mortgage loan~~
35 ~~originator licensees~~ shall preserve their books, accounts, and
36 records, including cards used in the card system, if any, for at least
37 three years after making the final entry on any loan recorded
38 therein.

39 *SEC. 40. Section 22159 of the Financial Code is amended to*
40 *read:*

1 22159. (a) Each *finance lender or broker* licensee shall file
2 an annual report with the commissioner, on or before the 15th day
3 of March, giving the relevant information that the commissioner
4 reasonably requires concerning the business and operations
5 conducted by the licensee within the state during the preceding
6 calendar year for each licensed place of business. The individual
7 annual reports filed pursuant to this section shall be made available
8 to the public for inspection except, upon request in the annual
9 report to the commissioner, the balance sheet contained in the
10 annual report of a sole proprietor or any other nonpublicly traded
11 persons. “Nonpublicly traded person” for purposes of this section
12 means persons with securities owned by 35 or fewer individuals.
13 The report shall be made under oath and in the form prescribed by
14 the commissioner.

15 (b) A licensee shall make other special reports that may be
16 required by the commissioner.

17 (c) *The commissioner may require a licensee that employs one*
18 *or more mortgage loan originators to submit to the Nationwide*
19 *Mortgage Licensing System and Registry reports of condition,*
20 *which shall be in the form and shall contain the information as*
21 *the Nationwide Mortgage Licensing System and Registry may*
22 *require.*

23 (d) *The commissioner may by rule or order require a mortgage*
24 *loan originator to submit reports of condition to the Nationwide*
25 *Mortgage Licensing System and Registry, in lieu of the reports of*
26 *condition required of his or her employer pursuant to subdivision*
27 *(c).*

28 SEC. 41. *Section 22168 of the Financial Code is amended to*
29 *read:*

30 22168. (a) The commissioner may, after appropriate notice
31 and opportunity for hearing, suspend for a period not to exceed 12
32 months or bar a person from any position of employment with a
33 licensee if the commissioner finds that the person has willfully
34 used or claimed without authority a designation or certification of
35 special education, practice, or skill that the person has not attained,
36 or willfully held out to the public a confusingly similar designation
37 or certification for the purpose of misleading the public regarding
38 his or her qualifications or experience.

39 (b) Within 15 days from the date of a notice of intention to issue
40 an order pursuant to subdivision (a), the person may request a

1 hearing under the Administrative Procedure Act (Chapter 5
2 (commencing with Section 11500) of Part 1 of Division 3 of Title
3 2 of the Government Code). Upon receiving a request, the matter
4 shall be set for hearing to commence within 30 days after receipt
5 unless the person subject to this division consents to a later date.
6 If no hearing is requested within 15 days after the mailing or
7 service of the notice and none is ordered by the commissioner, the
8 failure to request a hearing shall constitute a waiver of the right to
9 a hearing.

10 (c) Upon receipt of a notice of intention to issue an order
11 pursuant to subdivision (a), the person who is the subject of the
12 proposed order is immediately prohibited from engaging in any
13 activities subject to licensure under this division.

14 (d) Persons suspended or barred under this section are prohibited
15 from participating in any business activity of a licensed finance
16 lender, *broker, or mortgage loan originator*, and from engaging
17 in any business activity on the premises where a licensed finance
18 lender, *broker, or mortgage loan originator* is conducting its
19 business. This subdivision shall not be construed to prohibit
20 suspended or barred persons from having their personal transactions
21 processed by a licensed finance lender, *broker, or mortgage loan*
22 *originator*.

23 *SEC. 42. Section 22169 of the Financial Code is amended to*
24 *read:*

25 22169. (a) The commissioner may, after appropriate notice
26 and opportunity for hearing, by order, censure or suspend for a
27 period not exceeding 12 months, or bar from any position of
28 employment, management, or control any finance lender, broker,
29 *mortgage loan originator*, or any other person, if the commissioner
30 finds either of the following:

31 (1) That the censure, suspension, or bar is in the public interest
32 and that the person has committed or caused a violation of this
33 division or rule or order of the commissioner, which violation was
34 either known or should have been known by the person committing
35 or causing it or has caused material damage to the finance lender,
36 *broker, or mortgage loan originator*, or to the public.

37 (2) That the person has been convicted of or pleaded nolo
38 contendere to any crime, or has been held liable in any civil action
39 by final judgment, or any administrative judgment by any public
40 agency, if that crime or civil or administrative judgment involved

1 any offense involving dishonesty, fraud, or deceit, or any other
2 offense reasonably related to the qualifications, functions, or duties
3 of a person engaged in the business in accordance with the
4 provisions of this division.

5 (b) Within 15 days from the date of a notice of intention to issue
6 an order pursuant to subdivision (a), the person may request a
7 hearing under the Administrative Procedure Act (Chapter 4.5
8 (commencing with Section 11400) of Division 3 of Title 2 of the
9 Government Code). Upon receipt of a request, the matter shall be
10 set for hearing to commence within 30 days after such receipt
11 unless the person subject to this division consents to a later date.
12 If no hearing is requested within 15 days after the mailing or
13 service of such notice and none is ordered by the commissioner,
14 the failure to request a hearing shall constitute a waiver of the right
15 to a hearing.

16 (c) Upon receipt of a notice of intention to issue an order
17 pursuant to this section, the person who is the subject of the
18 proposed order is immediately prohibited from engaging in any
19 activities subject to licensure under the law.

20 (d) Persons suspended or barred under this section are prohibited
21 from participating in any business activity of a finance lender,
22 *broker, or mortgage loan originator*, and from engaging in any
23 business activity on the premises where a finance lender, *broker,*
24 *or mortgage loan originator* is conducting business.

25 *SEC. 43. Section 22170 of the Financial Code is amended to*
26 *read:*

27 22170. (a) It is unlawful for any person to knowingly alter,
28 destroy, mutilate, conceal, cover up, falsify, or make a false entry
29 in any record, document, or tangible object with the intent to
30 impede, obstruct, or influence the administration or enforcement
31 of any provision of this division.

32 (b) It is unlawful for any person to knowingly make an untrue
33 statement to the commissioner *or the Nationwide Mortgage*
34 *Licensing System and Registry* during the course of licensing,
35 investigation, or examination, with the intent to impede, obstruct,
36 or influence the administration or enforcement of any provision
37 of this division.

38 *SEC. 44. Section 22171 of the Financial Code is amended to*
39 *read:*

1 22171. (a) The commissioner shall apply the guidance on
2 nontraditional mortgage product risks published on November 14,
3 2006, by the Conference of State Bank Supervisors and the
4 American Association of Residential Mortgage Regulators, and
5 the Statement on Subprime Mortgage Lending published on July
6 17, 2007, by the aforementioned entities and the National
7 Association of Consumer Credit Administrators, to licensees.

8 (b) The commissioner may adopt emergency and final
9 regulations to clarify the application of this section as soon as
10 possible.

11 (c) A *finance lender or broker* licensee shall adopt and adhere
12 to policies and procedures that are reasonably intended to achieve
13 the objectives set forth in the documents described in subdivision
14 (a). A *mortgage loan originator licensee shall adhere to policies*
15 *and procedures developed by its employer in accordance with this*
16 *division and applicable federal law and regulation.*

17 SEC. 45. Section 22172 is added to the Financial Code, to
18 read:

19 22172. (a) The commissioner may do one or more of the
20 following:

21 (1) *Deny, suspend, revoke, condition, or decline to renew a*
22 *mortgage loan originator license for a violation of this division,*
23 *or any rules or regulations adopted thereunder.*

24 (2) *Deny, suspend, revoke, condition, or decline to renew a*
25 *mortgage loan originator license if an applicant or licensee fails*
26 *at any time to meet the requirements of Section 22109.1 or 22109.4,*
27 *or withholds information or makes a material misstatement in an*
28 *application for a license or license renewal.*

29 (3) *Order restitution against a mortgage loan originator or any*
30 *finance lender or broker licensee employing a mortgage loan*
31 *originator for a violation of this division.*

32 (4) *Impose fines on a mortgage loan originator or any finance*
33 *lender or broker licensee employing a mortgage loan originator*
34 *pursuant to subdivisions (b), (c), and (d).*

35 (5) *Issue orders or directives to mortgage loan originators under*
36 *this division as follows:*

37 (A) *Order or direct a mortgage loan originator or any finance*
38 *lender or broker licensee employing a mortgage loan originator*
39 *to desist and refrain from conducting business, including immediate*
40 *temporary orders to desist and refrain.*

1 (B) Order or direct a mortgage loan originator or any finance
2 lender or broker licensee employing a mortgage loan originator
3 to cease any harmful activities or violations of this division,
4 including immediate temporary orders to desist and refrain.

5 (C) Enter immediate temporary orders to cease business under
6 a license issued pursuant to the authority granted under Section
7 22100 if the commissioner determines that the license was
8 erroneously granted or the mortgage loan originator is currently
9 in violation of this division.

10 (D) Order or direct any other affirmative action as the
11 commissioner deems necessary.

12 (b) The commissioner may impose a civil penalty on a mortgage
13 loan originator or any finance lender or broker licensee employing
14 a mortgage loan originator, if the commissioner finds, on the
15 record after notice and opportunity for hearing, that the mortgage
16 loan originator or any finance lender or broker licensee employing
17 a mortgage loan originator has violated or failed to comply with
18 any requirement of this division or any regulation prescribed by
19 the commissioner under this division or order issued under
20 authority of this division.

21 (c) The maximum amount of penalty for each act or omission
22 described in subdivision (b) shall be twenty-five thousand dollars
23 (\$25,000).

24 (d) Each violation or failure to comply with any directive or
25 order of the commissioner is a separate and distinct violation or
26 failure.

27 SEC. 46. Section 22347 is added to the Financial Code, to
28 read:

29 22347. The unique identifier of any licensed mortgage loan
30 originator shall be clearly shown on all residential mortgage loan
31 application forms, solicitations, or advertisements, including
32 business cards or Internet Web sites, and any other documents as
33 established by rule, regulation, or order of the commissioner.

34 SEC. 47. Section 22700 of the Financial Code is amended to
35 read:

36 22700. (a) ~~Licenses~~ Finance lender and broker licenses issued
37 under this division shall remain in effect until they are surrendered,
38 revoked, or suspended.

39 (b) Mortgage loan originator licenses issued under this division
40 shall be renewed annually upon the payment of an annual

1 *assessment, and if renewed by the licensee, shall remain in effect*
2 *until they are surrendered, revoked, or suspended.*

3 ~~(b)~~

4 (c) Surrender of a license becomes effective 30 days after receipt
5 of an application to surrender the license or within a shorter period
6 of time that the commissioner may determine, unless a revocation
7 or suspension proceeding is pending when the application is filed
8 or a proceeding to revoke or suspend or to impose conditions upon
9 the surrender is instituted within 30 days after the application is
10 filed. If a proceeding is pending or instituted, surrender of a license
11 becomes effective at the time and upon the conditions that the
12 commissioner determines.

13 *SEC. 48. Section 22755 is added to the Financial Code, to*
14 *read:*

15 *22755. It is a violation of this division for a mortgage loan*
16 *originator to do any of the following:*

17 (a) *Directly or indirectly employ any scheme, device, or artifice*
18 *to defraud or mislead borrowers or lenders or to defraud any*
19 *person.*

20 (b) *Engage in any unfair or deceptive practice toward any*
21 *person.*

22 (c) *Obtain property by fraud or misrepresentation.*

23 (d) *Solicit or enter into a contract with a borrower that provides*
24 *in substance that the mortgage loan originator may earn a fee or*
25 *commission through best efforts to obtain a loan even though no*
26 *loan is actually obtained for the borrower.*

27 (e) *Solicit, advertise, or enter into a contract for specific interest*
28 *rates, points, or other financing terms unless the terms are actually*
29 *available at the time of soliciting, advertising, or contracting.*

30 (f) *Conduct any business covered by this division without*
31 *holding a valid license as required under this division, or assist*
32 *or aide and abet any person in the conduct of business under this*
33 *division without a valid license as required under this division.*

34 (g) *Fail to make disclosures as required by this division and*
35 *any other applicable state or federal law, including regulations*
36 *thereunder.*

37 (h) *Fail to comply with this division or rules or regulations*
38 *promulgated under this division, or fail to comply with any other*
39 *state or federal law, including the rules and regulations thereunder,*

1 applicable to any business authorized or conducted under this
2 division.

3 (i) Make, in any manner, any false or deceptive statement or
4 representation including, with regard to the rates, points, or other
5 financing terms or conditions for a residential mortgage loan, or
6 engage in bait and switch advertising.

7 (j) Negligently make any false statement or knowingly and
8 willfully make any omission of material fact in connection with
9 any information or reports filed with a governmental agency or
10 the Nationwide Mortgage Licensing System and Registry or in
11 connection with any investigation conducted by the commissioner
12 or another governmental agency.

13 (k) Make any payment, threat, or promise, directly or indirectly,
14 to any person for the purposes of influencing the independent
15 judgment of the person in connection with a residential mortgage
16 loan, or make any payment, threat, or promise, directly or
17 indirectly, to any appraiser of a property, for the purposes of
18 influencing the independent judgment of the appraiser with respect
19 to the value of the property.

20 (l) Collect, charge, attempt to collect or charge, or use or
21 propose any agreement purporting to collect or charge any fee
22 prohibited by this division.

23 (m) Cause or require a borrower to obtain property insurance
24 coverage in an amount that exceeds the replacement cost of the
25 improvements as established by the property insurer.

26 (n) Fail to truthfully account for moneys belonging to a party
27 of a residential mortgage loan transaction.

28 SEC. 49. Section 50002 of the Financial Code is amended to
29 read:

30 50002. (a) No person shall engage in the business of making
31 residential mortgage loans or servicing residential mortgage loans,
32 in this state, without first obtaining a license from the commissioner
33 in accordance with the requirements of Chapter 2 (commencing
34 with Section 50120) or Chapter 3 (commencing with Section
35 50130), and any rules promulgated by the commissioner under
36 this law, unless a person or transaction is excepted from a definition
37 or exempt from licensure by a provision of this law or a rule of
38 the commissioner.

39 (b) An employee of a licensee or of a person exempt from
40 licensure is not required to be licensed when acting within the

1 scope of his or her employment and shall be exempt from any
2 other law from which his or her employer is exempt, *except that*
3 *an individual who meets the definition of a mortgage loan*
4 *originator in subdivision (u) of Section 50003 shall be subject to*
5 *this division.*

6 (c) *The following persons are exempt from subdivision (a):*

7 (1) *Any bank, trust company, insurance company, or industrial*
8 *loan company doing business under the authority of, or in*
9 *accordance with, a license, certificate, or charter issued by the*
10 *United States or any state, district, territory, or commonwealth of*
11 *the United States that is authorized to transact business in this*
12 *state.*

13 (2) *A federally chartered savings and loan association, federal*
14 *savings bank, or federal credit union that is authorized to transact*
15 *business in this state.*

16 (3) *A savings and loan association, savings bank, or credit union*
17 *organized under the laws of this or any other state that is*
18 *authorized to transact business in this state.*

19 (4) *A person engaged solely in business, commercial, or*
20 *agricultural mortgage lending.*

21 (5) *A wholly owned service corporation of a savings and loan*
22 *association or savings bank organized under the laws of this state*
23 *or the wholly owned service corporation of a federally chartered*
24 *savings and loan association or savings bank that is authorized*
25 *to transact business in this state.*

26 (6) *An agency or other instrumentality of the federal*
27 *government, or state or municipal government.*

28 (7) *An employee or employer pension plan making residential*
29 *mortgage loans only to its participants, or a person making those*
30 *loans only to its employees or the employees of a holding company,*
31 *or an owner who controls that person, affiliate, or subsidiary of*
32 *that person.*

33 (8) *A person acting in a fiduciary capacity conferred by the*
34 *authority of a court.*

35 (9) *A real estate broker licensed under California law, when*
36 *making, arranging, selling, or servicing a residential loan.*

37 (10) *A California finance lender or broker licensed under*
38 *Division 9 (commencing with Section 22000), when acting under*
39 *the authority of that license.*

1 (11) A trustee under a deed of trust pursuant to the Civil Code,
2 when collecting delinquent loan payments, interest, or other loan
3 amounts, or performing other acts in a judicial or nonjudicial
4 foreclosure proceeding.

5 (12) A mortgage loan originator who has obtained a license
6 under Chapter 3.5 (commencing with Section 50140), provided
7 that the mortgage loan originator is employed by a residential
8 mortgage lender or servicer.

9 (13) A registered mortgage loan originator described in
10 subdivision (e).

11 (d) An individual, unless specifically exempted under subdivision
12 (e), shall not engage in the business of a mortgage loan originator
13 with respect to any dwelling located in this state without first
14 obtaining and maintaining annually a license in accordance with
15 the requirements of Chapter 3.5 (commencing with Section 50140)
16 and any rules promulgated by the commissioner under that chapter.
17 Each licensed mortgage loan originator shall register with and
18 maintain a valid unique identifier issued by the Nationwide
19 Mortgage Licensing System and Registry.

20 (e) A registered mortgage loan originator is exempt from
21 licensure under subdivisions (a) and (d), when he or she is
22 employed by a depository institution, a subsidiary of a depository
23 institution that is owned and controlled by a depository institution
24 and regulated by a federal banking agency, or an institution
25 regulated by the Farm Credit Administration.

26 (f) A loan processor or underwriter who is an independent
27 contractor employed engaged by a residential mortgage lender or
28 servicer may not perform the activities of a loan processor or
29 underwriter under this division unless the independent contractor
30 loan processor or underwriter obtains and maintains a license
31 under Section 50120.

32 SEC. 50. Section 50002.5 is added to the Financial Code, to
33 read:

34 50002.5. (a) Every licensee engaging in the business of
35 making, servicing, or making and servicing residential mortgage
36 loans shall require that every mortgage loan originator employed
37 or compensated by that licensee obtains and maintains a mortgage
38 loan originator license from the commissioner under this division
39 or Division 9 (commencing with Section 22000), or has first
40 obtained a license endorsement from the commissioner of Real

1 *Estate pursuant to Article 2.1 (commencing with Section 10166.01)*
2 *of Chapter 3 of Part 1 of Division 4 of the Business and Professions*
3 *Code.*

4 *(b) A residential mortgage lender or servicer shall not employ*
5 *a mortgage loan originator whose license or license endorsement*
6 *has lapsed.*

7 *(c) A residential mortgage lender or servicer may not make or*
8 *broker a residential mortgage loan unless that loan is negotiated*
9 *by or applied for through a licensed mortgage loan originator.*

10 *(d) Every licensee engaged in the business of making, servicing,*
11 *or making and servicing residential mortgage loans and every*
12 *mortgage loan originator licensed under this division shall register*
13 *with and maintain a valid unique identifier issued by the*
14 *Nationwide Mortgage Licensing System and Registry.*

15 *(e) No mortgage loan originator licensed under this division*
16 *and employed by a licensed residential mortgage lender or*
17 *residential mortgage servicer shall engage in any activity that is*
18 *not an authorized activity for a licensed residential mortgage*
19 *lender or residential mortgage servicer pursuant to this division.*

20 *SEC. 51. Section 50003 of the Financial Code is amended to*
21 *read:*

22 50003. (a) “Annual audit” means a certified audit of the
23 licensee’s books, records, and systems of internal control performed
24 by an independent certified public accountant in accordance with
25 generally accepted accounting principles and generally accepted
26 auditing standards.

27 (b) “Borrower” means the loan applicant.

28 (c) “Buy” includes exchange, offer to buy, or solicitation to
29 buy.

30 (d) “Commissioner” means the Commissioner of Corporations.

31 (e) “Control” means the possession, directly or indirectly, of
32 the power to direct, or cause the direction of, the management and
33 policies of a licensee under this division, whether through voting
34 or through the ownership of voting power of an entity that
35 possesses voting power of the licensee, or otherwise. Control is
36 presumed to exist if a person, directly or indirectly, owns, controls,
37 or holds 10 percent or more of the voting power of a licensee or
38 of an entity that owns, controls, or holds, with power to vote, 10
39 percent or more of the voting power of a licensee. No person shall

1 be deemed to control a licensee solely by reason of his or her status
 2 as an officer or director of the licensee.

3 (f) *“Depository institution” has the same meaning as in Section*
 4 *3 of the Federal Deposit Insurance Act, and includes any credit*
 5 *union.*

6 (f)

7 (g) *“Engage in the business” means the dissemination to the*
 8 *public, or any part of the public, by means of written, printed, or*
 9 *electronic communication or any communication by means of*
 10 *recorded telephone messages or spoken on radio, television, or*
 11 *similar communications media, of any information relating to the*
 12 *making of residential mortgage loans, the servicing of residential*
 13 *mortgage loans, or both. “Engage in the business” also means,*
 14 *without limitation, making residential mortgage loans or servicing*
 15 *residential mortgage loans, or both.*

16 (g) *“Exempt person” means any of the following:*

17 (h) *“Federal banking agencies” means the Board of Governors*
 18 *of the Federal Reserve System, the Comptroller of the Currency,*
 19 *the Director of the Office of Thrift Supervision, the National Credit*
 20 *Union Administration, and the Federal Deposit Insurance*
 21 *Corporation.*

22 ~~(1) Any bank, trust company, insurance company, or industrial~~
 23 ~~loan company doing business under the authority of or in~~
 24 ~~accordance with a license, certificate, or charter issued by the~~
 25 ~~United States or any state, district, territory, or commonwealth of~~
 26 ~~the United States that is authorized to transact business in this~~
 27 ~~state.~~

28 ~~(2) A federally chartered savings and loan association, federal~~
 29 ~~savings bank, or federal credit union that is authorized to transact~~
 30 ~~business in this state.~~

31 ~~(3) A savings and loan association, savings bank, or credit union~~
 32 ~~organized under the laws of this or any other state that is authorized~~
 33 ~~to transact business in this state.~~

34 ~~(4) A person engaged solely in business, commercial, or~~
 35 ~~agricultural mortgage lending.~~

36 ~~(5) A wholly owned service corporation of a savings and loan~~
 37 ~~association or savings bank organized under the laws of this state~~
 38 ~~or the wholly owned service corporation of a federally chartered~~
 39 ~~savings and loan association or savings bank that is authorized to~~
 40 ~~transact business in this state.~~

1 ~~(6) Any person making residential mortgage loans with his, her,~~
2 ~~or its own funds for his, her, or its own investment without intent~~
3 ~~to resell more than eight residential loans in any one calendar year.~~

4 ~~(7) An agency, or other instrumentality of the federal~~
5 ~~government, or state or municipal government.~~

6 ~~(8) An employee or employer pension plan making residential~~
7 ~~mortgage loans only to its participants, or a person making those~~
8 ~~loans only to its employees or the employees of a holding company,~~
9 ~~owner who controls that person, affiliate, or subsidiary of that~~
10 ~~person.~~

11 ~~(9) A person acting in a fiduciary capacity conferred by the~~
12 ~~authority of a court.~~

13 ~~(10) A real estate broker licensed under California law, when~~
14 ~~making, arranging, selling, or servicing a residential loan.~~

15 ~~(11) A California finance lender licensed under Division 9~~
16 ~~(commencing with Section 22000), when acting under the authority~~
17 ~~of that license.~~

18 ~~(12) A trustee under a deed of trust pursuant to the Civil Code,~~
19 ~~when collecting delinquent loan payments, interest, or other loan~~
20 ~~amounts, or performing other acts in a judicial or nonjudicial~~
21 ~~foreclosure proceeding.~~

22 ~~(h)~~

23 ~~(i) “In this state” means includes any activity of a person relating~~
24 ~~to making or servicing a residential mortgage loan that originates~~
25 ~~from this state and is directed to persons outside this state, or that~~
26 ~~originates from outside this state and is directed to persons inside~~
27 ~~this state, or that originates inside this state and is directed to~~
28 ~~persons inside this state, or that leads to the formation of a contract~~
29 ~~and the offer or acceptance thereof is directed to a person in this~~
30 ~~state (whether from inside or outside this state and whether the~~
31 ~~offer was made inside or outside the state).~~

32 ~~(i)~~

33 ~~(j) “Institutional investor” means the following:~~

34 ~~(1) The United States or any state, district, territory, or~~
35 ~~commonwealth thereof, or any city, county, city and county, public~~
36 ~~district, public authority, public corporation, public entity, or~~
37 ~~political subdivision of a state, district, territory, or commonwealth~~
38 ~~of the United States, or any agency or other instrumentality of any~~
39 ~~one or more of the foregoing, including, by way of example, the~~

1 Federal National Mortgage Association and the Federal Home
2 Loan Mortgage Corporation.

3 (2) Any bank, trust company, savings bank or savings and loan
4 association, credit union, industrial bank or industrial loan
5 company, personal property broker, consumer finance lender,
6 commercial finance lender, or insurance company, or subsidiary
7 or affiliate of one of the preceding entities, doing business under
8 the authority of or in accordance with a license, certificate, or
9 charter issued by the United States or any state, district, territory,
10 or commonwealth of the United States.

11 (3) Trustees of pension, profit-sharing, or welfare funds, if the
12 pension, profit-sharing, or welfare fund has a net worth of not less
13 than fifteen million dollars (\$15,000,000), except pension,
14 profit-sharing, or welfare funds of a licensee or its affiliate,
15 self-employed individual retirement plans, or individual retirement
16 accounts.

17 (4) A corporation or other entity with outstanding securities
18 registered under Section 12 of the *federal* Securities Exchange Act
19 of 1934 or a wholly owned subsidiary of that corporation or entity,
20 provided that the purchaser represents either of the following:

21 (A) That it is purchasing for its own account for investment and
22 not with a view to, or for sale in connection with, any distribution
23 of a promissory note.

24 (B) That it is purchasing for resale pursuant to an exemption
25 under Rule 144A (17 C.F.R. 230.144A) of the Securities and
26 Exchange Commission.

27 (5) An investment company registered under the Investment
28 Company Act of 1940; or a wholly owned and controlled subsidiary
29 of that company, provided that the purchaser makes either of the
30 representations provided in paragraph (4).

31 (6) A ~~person~~ *residential mortgage lender or servicer* licensed
32 to make residential mortgage loans under this law or an affiliate
33 or subsidiary of that person.

34 (7) Any person who is licensed as a securities broker or
35 securities dealer under any law of this state, or of the United States,
36 or any employee, officer or agent of that person, if that person is
37 acting within the scope of authority granted by that license or an
38 affiliate or subsidiary controlled by that broker or dealer, in
39 connection with a transaction involving the offer, sale, purchase,
40 or exchange of one or more promissory notes secured directly or

1 indirectly by liens on real property or a security representing an
2 ownership interest in a pool of promissory notes secured directly
3 or indirectly by liens on real property, and the offer and sale of
4 those securities is qualified under the California Corporate
5 Securities Law of 1968 or registered under federal securities laws,
6 or exempt from qualification or registration.

7 (8) A licensed real estate broker selling the loan to an
8 institutional investor specified in paragraphs (1) to (7), inclusive,
9 or paragraph (9) or (10).

10 (9) A business development company as defined in Section
11 2(a)(48) of the Investment Company Act of 1940 or a Small
12 Business Investment Company licensed by the United States Small
13 Business Administration under Section 301(c) or (d) of the Small
14 Business Investment Act of 1958.

15 (10) A syndication or other combination of any of the foregoing
16 entities that is organized to purchase a promissory note.

17 (11) A trust or other business entity established by an
18 institutional investor for the purpose of issuing or facilitating the
19 issuance of securities representing undivided interests in, or rights
20 to receive payments from or to receive payments primarily from,
21 a pool of financial assets held by the trust or business entity,
22 provided that all of the following apply:

23 (A) The business entity is not a sole proprietorship.

24 (B) The pool of assets consists of one or more of the following:

25 (i) Interest-bearing obligations.

26 (ii) Other contractual obligations representing the right to receive
27 payments from the assets.

28 (iii) Surety bonds, insurance policies, letters of credit, or other
29 instruments providing credit enhancement for the assets.

30 (C) The securities will be either one of the following:

31 (i) Rated as “investment grade” by Standard and Poor’s
32 Corporation or Moody’s Investors Service, Inc. “Investment grade”
33 means that the securities will be rated by Standard and Poor’s
34 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
35 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
36 with “+” or “—” designation or other variations that occur within
37 those ratings.

38 (ii) Sold to an institutional investor.

1 (D) The offer and sale of the securities is qualified under the
 2 California Corporate Securities Law of 1968 or registered under
 3 federal securities laws, or exempt from qualification or registration.

4 ~~(j)~~

5 (k) “Institutional lender” means the following:

6 (1) The United States or any state, district, territory, or
 7 commonwealth thereof, or any city, county, city and county, public
 8 district, public authority, public corporation, public entity, or
 9 political subdivision of a state, district, territory, or commonwealth
 10 of the United States, or any agency or other instrumentality of any
 11 one or more of the foregoing, including, by way of example, the
 12 Federal National Mortgage Association and the Federal Home
 13 Loan Mortgage Corporation.

14 (2) Any bank, trust company, savings bank or savings and loan
 15 association, credit union, industrial loan company, or insurance
 16 company, or service or investment company that is wholly owned
 17 and controlled by one of the preceding entities, doing business
 18 under the authority of and in accordance with a license, certificate,
 19 or charter issued by the United States or any state, district, territory,
 20 or commonwealth of the United States.

21 (3) Any corporation with outstanding securities registered under
 22 Section 12 of the Securities Exchange Act of 1934 or any wholly
 23 owned subsidiary of that corporation.

24 (4) ~~A person~~ *residential mortgage lender or servicer* licensed
 25 to make residential mortgage loans under this law.

26 ~~(k)~~

27 (l) “Law” means the California Residential Mortgage Lending
 28 Act.

29 ~~(t)~~

30 (m) “Lender” means a person that (1) is an approved lender for
 31 the Federal Housing Administration, Veterans Administration,
 32 Farmers Home Administration, Government National Mortgage
 33 Association, Federal National Mortgage Association, or Federal
 34 Home Loan Mortgage Corporation, (2) directly makes residential
 35 mortgage loans, and (3) makes the credit decision in the loan
 36 transactions.

37 ~~(m)~~

38 (n) “Licensee” means, depending on the context, a person
 39 licensed under ~~either~~ Chapter 2 (commencing with Section 50120)

1 ~~or 50120~~, Chapter 3 (commencing with Section ~~50130~~). 50130),
2 or Chapter 3.5 (commencing with Section 50140).

3 ~~(n)~~

4 (o) “Makes or making residential mortgage loans” or “mortgage
5 lending” means processing, underwriting, or as a lender using or
6 advancing one’s own funds, or making a commitment to advance
7 one’s own funds, to a loan applicant for a residential mortgage
8 loan.

9 ~~(o)~~

10 (p) “Mortgage loan,” “residential mortgage loan,” or “home
11 mortgage loan” means a federally ~~regulated~~ related mortgage loan
12 as defined in Section 3500.2 of Title 24 of the Code of Federal
13 Regulations, or a loan made to finance construction of a ~~one to~~
14 ~~four~~ one-to-four family dwelling.

15 ~~(p)~~

16 (q) “Mortgage servicer” or “residential mortgage loan servicer”
17 means a person that (1) is an approved servicer for the Federal
18 Housing Administration, Veterans Administration, Farmers Home
19 Administration, Government National Mortgage Association,
20 Federal National Mortgage Association, or Federal Home Loan
21 Mortgage Corporation, and (2) directly services or offers to service
22 mortgage loans.

23 (r) “*Nationwide Mortgage Licensing System and Registry*”
24 means a mortgage licensing system developed and maintained by
25 the Conference of State Bank Supervisors and the American
26 Association of Residential Mortgage Regulators for the licensing
27 and registration of licensed mortgage loan originators.

28 ~~(q)~~

29 (s) “Net worth” has the meaning set forth in Section 50201.

30 ~~(r)~~

31 (t) “Own funds” means (1) cash, corporate capital, or warehouse
32 credit lines at commercial banks, savings banks, savings and loan
33 associations, industrial loan companies, or other sources that are
34 liability items on a lender’s financial statements, whether secured
35 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,
36 or warehouse credit lines at commercial banks or other sources
37 that are liability items on the affiliate’s financial statements,
38 whether secured or unsecured. “Own funds” does not include funds
39 provided by a third party to fund a loan on condition that the third

1 party will subsequently purchase or accept an assignment of that
 2 loan.

3 (s)

4 (u) “Person” means a natural person, a sole proprietorship, a
 5 corporation, a partnership, a limited liability company, an
 6 association, a trust, a joint venture, an unincorporated organization,
 7 a joint stock company, a government or a political subdivision of
 8 a government, and any other entity.

9 (t)

10 (v) “Residential real property” or “residential real estate” means
 11 real property located in this state that is improved by a one-to-four
 12 family dwelling.

13 (w) “SAFE Act” means the federal Secure and Fair Enforcement
 14 for Mortgage Licensing Act of 2008 (Public Law 110-289).

15 (tt)

16 (x) “Service” or “servicing” means receiving more than three
 17 installment payments of principal, interest, or other amounts placed
 18 in escrow, pursuant to the terms of a mortgage loan and performing
 19 services by a licensee relating to that receipt or the enforcement
 20 of its receipt, on behalf of the holder of the note evidencing that
 21 loan.

22 (vv)

23 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

24 (z) “Unique identifier” means a number or other identifier
 25 assigned by protocols established by the Nationwide Mortgage
 26 Licensing System and Registry.

27 (aa) For purposes of Sections 50142, 50143, and 50145,
 28 “nontraditional mortgage product” means any mortgage product
 29 other than a 30-year fixed rate mortgage.

30 SEC. 52. Section 50003.5 is added to the Financial Code, to
 31 read:

32 50003.5. (a) “Mortgage loan originator” means an individual
 33 who, for compensation or gain, or in the expectation of
 34 compensation or gain, takes a residential mortgage loan
 35 application or offers or negotiates terms of a residential mortgage
 36 loan.

37 (b) Mortgage loan originator does not include any of the
 38 following:

39 (1) An individual who performs purely administrative or clerical
 40 tasks on behalf of a person meeting the definition of a mortgage

1 loan originator, except as provided in subdivision (c) of Section
2 50003.6. The term “administrative or clerical tasks” means the
3 receipt, collection, and distribution of information common for
4 the processing or underwriting of a loan in the mortgage industry
5 and communication with a consumer to obtain information
6 necessary for the processing or underwriting of a residential
7 mortgage loan, to the extent that the communication does not
8 include offering or negotiating loan rates or terms, or counseling
9 consumers about residential mortgage loan rates or terms.

10 (2) An individual who solely renegotiates terms for existing
11 mortgage loans held or serviced by his or her employer and who
12 does not otherwise act as a mortgage loan originator, unless the
13 United States Department of Housing and Urban Development or
14 a court of competent jurisdiction determines that the SAFE Act
15 requires that employee to be licensed as a mortgage loan originator
16 under state laws implementing the SAFE Act.

17 (3) An individual that is solely involved in extensions of credit
18 relating to timeshare plans, as that term is defined in Section
19 101(53D) of Title 11 of the United States Code.

20 (4) An individual licensed as a mortgage loan originator
21 pursuant to Article 2.1 (commencing with Section 10166.01) of
22 Chapter 3 of Part 1 of Division 4 of the Business and Professions
23 Code and the SAFE Act.

24 (c) “Registered mortgage loan originator” means any individual
25 who is all of the following:

26 (1) Meets the definition of mortgage loan originator.

27 (2) Is an employee of a depository institution, a subsidiary that
28 is owned and controlled by a depository institution and regulated
29 by a federal banking agency, or an institution regulated by the
30 Farm Credit Administration.

31 (3) Is registered with, and maintains a unique identifier through,
32 the Nationwide Mortgage Licensing System and Registry.

33 (d) “Loan processor or underwriter” means an individual who
34 performs clerical or support duties as an employee at the direction
35 of, and subject to the supervision and instruction of, a mortgage
36 loan originator licensed by the state or a registered mortgage loan
37 originator.

38 SEC. 53. Section 50003.6 is added to the Financial Code, to
39 read:

1 50003.6. (a) A loan processor or underwriter who does not
2 represent to the public, through advertising or other means of
3 communicating or providing information, including the use of
4 business cards, stationery, brochures, signs, rate lists, or other
5 promotional items, that the individual can or will perform any of
6 the activities of a loan originator shall not be required to be
7 licensed as a mortgage loan originator.

8 (b) An individual engaging solely in loan processor or
9 underwriter activities shall not represent to the public, through
10 advertising or other means of communicating or providing
11 information including the use of business cards, stationery,
12 brochures, signs, rate lists, or other promotional items, that the
13 individual can or will perform any of the activities of a mortgage
14 loan originator.

15 (c) An independent contractor may not engage in the activities
16 of a loan processor or underwriter for a residential mortgage loan
17 unless the independent contractor loan processor or underwriter
18 obtains and maintains a residential mortgage lender or residential
19 mortgage servicer license and a mortgage loan originator license
20 under this division.

21 SEC. 54. Section 50120 of the Financial Code is amended to
22 read:

23 50120. (a) A residential mortgage lender shall file an
24 application for licensure under this chapter with the commissioner
25 to make or service residential mortgage loans in this state.

26 (b) A licensee may not engage in the business as a residential
27 mortgage lender under a name other than the name that appears
28 on the license, or a legally assumed name disclosed either in the
29 application or in an amendment to the application, which shall be
30 reflected on the license.

31 (c) A licensee may not make or service residential mortgage
32 loans secured by real property pursuant to the authority of a license,
33 or an exemption from licensure, under the Real Estate Law.

34 (d) The commissioner may, pursuant to Section 50321, order a
35 licensee to cease any other business conducted at any location
36 where the licensee operates under the authority of a residential
37 mortgage lender license, if the commissioner finds that the conduct
38 of that business has facilitated evasions of this division or the rules
39 adopted pursuant to this division, or that the conduct of that
40 business is in violation of any law to which that business is subject.

1 (e) A license *issued* for a business location outside this state
2 ~~may be issued if the licensee agrees in writing, and subject to~~ *shall*
3 *constitute an agreement by the licensee to, at the sole discretion*
4 of the commissioner, ~~to~~ either (1) make the licensee's books,
5 accounts, papers, records, and files available to the commissioner
6 or the commissioner's representatives in this state within 10
7 calendar days of a request from the commissioner or, (2) pay the
8 reasonable expenses for travel, meals, and lodging of the
9 commissioner or the commissioner's representatives incurred
10 during an investigation or examination made at the licensee's
11 location outside this state.

12 (f) *The commissioner may, by rule, require an applicant for a*
13 *residential mortgage lender or servicer license or a residential*
14 *mortgage lender or servicer licensee to make some or all filings*
15 *with the commissioner through the Nationwide Mortgage Licensing*
16 *System and Registry.*

17 (g) *The commissioner may, by rule, require licensees to pay*
18 *assessments through the Nationwide Mortgage Licensing System*
19 *and Registry.*

20 *SEC. 55. Section 50121 of the Financial Code is amended to*
21 *read:*

22 50121. The commissioner shall issue a *residential mortgage*
23 *leader* license upon the satisfaction of all of the following:

24 (a) ~~The filing with the commissioner of a complete and verified~~
25 ~~application for licensure~~ *executed application for licensure, which*
26 *may, at the discretion of the commissioner, include background*
27 *and experience disclosures required by any of the uniform*
28 *application forms of the Nationwide Mortgage Licensing System*
29 *and Registry.*

30 ~~(b) The filing as an exhibit to the application of a listing of~~
31 ~~material judgments filed against, and bankruptcy petitions filed~~
32 ~~by, the applicant for the preceding five years, and the disposition~~
33 ~~thereof.~~

34 (e)

35 (b) The payment of a nonrefundable investigation fee of one
36 hundred dollars (\$100), plus the cost of fingerprint processing and
37 clearance, and an application filing fee of nine hundred dollars
38 (\$900).

39 (d)

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

11 *SEC. 56. Section 50122 of the Financial Code is amended to*
12 *read:*

13 50122. (a) ~~The~~ *Except as provided in Section 50120, the*
14 *information provided on an application for a residential mortgage*
15 ~~lender~~ *lender, residential mortgage servicer, or residential*
16 *mortgage lender and servicer license shall be in writing, executed*
17 ~~under penalty of perjury, and verified sworn testimony~~ *on a form*
18 *prescribed by the commissioner. If an applicant proposes to engage*
19 *in business as a residential mortgage loan servicer as well as a*
20 *residential mortgage lender, this information shall be set forth in*
21 *the application. The commissioner may issue a license under this*
22 *chapter to engage in business as a residential mortgage lender or*
23 *to engage in business as a residential mortgage lender and*
24 *residential mortgage loan servicer. A person filing an application*
25 *under this chapter to engage in business as a residential mortgage*
26 *lender and a residential mortgage loan servicer is not required to*
27 *file an application under Chapter 3 (commencing with Section*
28 *50130).*

29 (b) The application shall contain the name and complete business
30 and residential address or addresses of the applicant. If the applicant
31 is a partnership, association, corporation, or other entity, the
32 application shall contain the names and complete business and
33 residential addresses of each member, director, and principal
34 officer. The application also shall include a description of the
35 activities of the applicant in the detail and for the periods that the
36 commissioner may require, including all of the following:

37 (1) A statement of financial solvency, noting the net worth
38 requirements and supported by an audited financial statement
39 prepared by an independent certified public accountant, and access
40 to the supporting credit information as required by this division.

1 (2) A statement that the applicant or its members, directors, or
2 principals, as appropriate, are at least 18 years of age. *The statement*
3 *may be made by providing each person's date of birth.*

4 (3) Information as to the character, fitness, financial and business
5 responsibility, background, experience, and criminal convictions
6 of any of the following:

7 (A) Any person that owns or controls, directly or indirectly, 10
8 percent or more of any class of stock of the applicant.

9 (B) Any person that controls, directly or indirectly, the election
10 of 25 percent or more of the members of the board of directors of
11 an applicant.

12 (C) Any person or entity that significantly influences or controls
13 the management of the applicant.

14 (4) A description of any disciplinary action filed under any other
15 license through which the person conducts its business.

16 (5) A description of any adverse judgments entered in court
17 actions filed by borrowers based upon allegations of fraud,
18 misrepresentation, or dishonesty in the conduct of the person's
19 business.

20 (6) A copy of the fidelity bond currently in effect.

21 (7) Other information as required by rule of the commissioner.

22 *SEC. 57. Section 50123 of the Financial Code is amended to*
23 *read:*

24 50123. (a) *A residential mortgage lender license shall remain*
25 *in effect until suspended, surrendered, or revoked.*

26 (b) *A residential mortgage lender licensee that ceases to engage*
27 *in the business regulated by this division and desires to no longer*
28 *be licensed shall inform the commissioner in writing and, at that*
29 *time, surrender the license and all other indicia of licensure to the*
30 *commissioner. The licensee shall file a plan for the withdrawal*
31 *from regulated business, and the plan shall include a timetable for*
32 *the disposition of the business. The plan shall also include a closing*
33 *audit, review, or other agreed upon procedures performed by an*
34 *independent certified public accountant prescribed by rule or order*
35 *of the commissioner. Upon receipt of the written notice and plan,*
36 *the commissioner shall review the plan and, if satisfactory to the*
37 *commissioner, shall accept the surrender of the license. A license*
38 *is not surrendered until its tender is accepted in writing by the*
39 *commissioner after a review, and a finding has been made on the*

1 licensee's plan required to be filed by this section, and a
2 determination has been made that there is no violation of this law.

3 (c) A *residential mortgage lender or servicer* licensee may not
4 surrender its license under this division and, under the authority
5 of a real estate license, subsequently engage in residential mortgage
6 lending or servicing activities that are subject to this division,
7 unless the licensee has been licensed under this division for a
8 period of five years or more.

9 *SEC. 58. Section 50124 of the Financial Code is amended to*
10 *read:*

11 50124. (a) ~~A license application must be accompanied by an~~
12 ~~exhibit containing statements that the applicant agrees to do~~
13 ~~residential mortgage lender or servicer shall do all of the~~
14 ~~following:~~

15 (1) ~~To maintain staff~~ *Maintain* adequate to meet the
16 requirements of this division, as prescribed by rule or order of the
17 commissioner.

18 (2) ~~To keep~~ *Keep* and maintain for 36 months from the date of
19 final entry the business records and other information required by
20 law or rules of the commissioner regarding any mortgage loan
21 made or serviced in the course of the conduct of its business.

22 (3) ~~To file~~ *File* with the commissioner any report required under
23 law or by rule or order of the commissioner.

24 (4) ~~To disburse~~ *Disburse* funds in accordance with its
25 agreements and to make a good faith and reasonable effort to effect
26 closing in a timely manner.

27 (5) ~~To account~~ *Account* or deliver to a person any personal
28 property such as money, funds, deposit, check, draft, mortgage,
29 other document, or thing of value, that has come into its possession
30 and is not its property, or that it is not in law or equity entitled to
31 retain under the circumstances, at the time that has been agreed
32 upon or is required by law, or, in the absence of a fixed time, upon
33 demand of the person entitled to the accounting or delivery.

34 (6) ~~To file~~ *File* with the commissioner an amendment to its
35 application prior to any material change in the information
36 contained in the application for licensure, including, without
37 limitation, the plan of operation. The commissioner shall, within
38 20 business days of receiving a completed amendment to the
39 application, or within a longer time if agreed to by the licensee,

- 1 ~~issue an order approving or disapproving~~ *approve or disapprove*
2 the effectiveness of the proposed amendment.
- 3 (7) ~~To comply~~ *Comply* with the provisions of this division, and
4 with any order or rule of the commissioner.
- 5 (8) ~~To submit~~ *Submit* to periodic examination by the
6 commissioner as required by this division.
- 7 (9) ~~To advise~~ *Advise* the commissioner by amendment to its
8 application of any material judgment filed against, or bankruptcy
9 petition filed by, the licensee within five days of the filing.
- 10 (10) ~~To notify~~ *Notify* the commissioner, in writing, ~~by certified~~
11 ~~mail, return receipt requested,~~ prior to opening a branch office in
12 this state or changing ~~the~~ *its* business location or locations ~~of the~~
13 ~~applicant or the branch offices of the applicant or its branch offices~~
14 from which activities subject to this division are conducted.
- 15 (b) ~~The exhibit also shall contain a space for the applicant to~~
16 ~~attest that the applicant:~~
- 17 (1) ~~Has complied~~
- 18 (11) *Comply* with all applicable state and federal tax return filing
19 requirements ~~for the past three years or has filed with the~~
20 ~~commissioner an accountant's or attorney's statement as to why~~
21 ~~no return was filed.~~
- 22 (12) *Refrain from employing, or paying a commission or other*
23 *fee to, a mortgage loan originator who is not licensed in this state,*
24 *unless the individual is exempt from licensure.*
- 25 (2) ~~Has not committed~~
- 26 (13) *Refrain from committing* a crime against the laws of any
27 state or the United States, involving moral turpitude,
28 misrepresentation, fraudulent or dishonest dealing, or fraud, and
29 ~~has disclosed~~ *disclose* to the commissioner any final judgment
30 entered against it in a civil action upon grounds or allegations of
31 fraud, misrepresentation, or deceit.
- 32 (3) ~~Has not engaged~~
- 33 (4) ~~Is not insolvent.~~
- 34 (5) ~~Has acted~~
- 35 (14) *Refrain from engaging* in conduct that would be cause for
36 denial of a license.
- 37 (15) *Remain solvent.*
- 38 (16) *Proceed* with due care and competence in performing any
39 act for which it is required to hold a license under this division.
- 40 (6) ~~Any other matter as required~~

1 (17) Comply with any other requirement established by rule of
 2 the commissioner.

3 (b) The commissioner may require an applicant to submit a
 4 statement agreeing to comply with the requirements of this section.

5 SEC. 59. Section 50125 of the Financial Code is amended to
 6 read:

7 50125. The commissioner may refuse to issue a residential
 8 mortgage lender or servicer license if any of the following apply:

9 (a) The applicant is not in material compliance with a provision
 10 of this division or an order or rule of the commissioner.

11 (b) The commissioner cannot make the findings specified in
 12 subdivision (d) of Section 50121.

13 (c) A material requirement for issuance of a license has not been
 14 met.

15 SEC. 60. Section 50126 of the Financial Code is amended to
 16 read:

17 50126. (a) Upon reasonable notice and opportunity to be heard,
 18 the commissioner may deny an application for any of the following
 19 reasons:

20 (1) A false statement of a material fact has been made in the
 21 application.

22 (2) Any officer, director, general partner, or person owning or
 23 controlling, directly or indirectly, 10 percent or more of the
 24 outstanding interests or equity securities of the applicant has, within
 25 the last 10 years, (A) been convicted of, or pleaded nolo contendere
 26 to, a crime or (B) committed any act involving dishonesty, fraud,
 27 or deceit, if the crime or act is substantially related to the
 28 qualifications, functions, or duties of a person engaged in business
 29 in accordance with this division.

30 (3) The applicant or any officer, director, general partner, or
 31 person owning or controlling, directly or indirectly, 10 percent or
 32 more of the outstanding interests or equity securities of the
 33 applicant, has violated any provision of this division or the rules
 34 thereunder or any similar regulatory scheme of the State of
 35 California or a foreign jurisdiction.

36 (4) The applicant employs a mortgage loan originator who is
 37 not licensed in this state, unless the mortgage loan originator is
 38 exempt from licensure.

39 (b) The application shall be considered withdrawn within the
 40 meaning of this section if the applicant fails to respond to a written

1 notification of a deficiency in the application within 90 days of
2 the date of the notification.

3 (c) The commissioner shall, within 60 days from the filing of
4 a full and complete application for a license, including the receipt
5 of background and investigative reports from the Department of
6 Justice or other government agencies, and the payment of the fees
7 required by Section 50121, issue either a *residential mortgage*
8 *lender or servicer* license or a statement of issues prepared in
9 accordance with Chapter 5 (commencing with Section 11500) of
10 Part 1 of Division 3 of Title 2 of the Government Code.

11 *SEC. 61. Section 50128 of the Financial Code is amended to*
12 *read:*

13 50128. As used in this act, the term “principal officer” means
14 an officer with direct responsibility for the conduct of the
15 *residential mortgage lender or servicer* licensee’s or license
16 applicant’s lending or servicing activities in this state.

17 *SEC. 62. Section 50129 of the Financial Code is amended to*
18 *read:*

19 50129. (a) A residential mortgage lender *or servicer* licensed
20 under this chapter may, under the authority of that license and
21 subject to the provisions of this division, do both of the following:

22 (1) Engage as a principal in the business of buying from or
23 selling to institutional investors residential mortgage loans by using
24 or advancing one’s own funds.

25 (2) Engage, pursuant to a written agency contract with an
26 institutional lender specified in paragraph (1), (2), or (4) of
27 subdivision-~~(j)~~ (k) of Section 50003, in the business of soliciting,
28 processing applications, or applying residential loan underwriting
29 criteria, but not engage in the business of brokerage services
30 pursuant to this subdivision, for residential mortgage loans for that
31 lender, using or advancing the funds of that lender, provided that
32 no fees or charges may be demanded or collected by the *residential*
33 *mortgage lender* licensee for any performance or service, except
34 fees demanded by, or collected on behalf of, the *institutional*
35 lender, and that the licensee gives a written disclosure to the
36 borrower, as soon as practicable but prior to loan closing,
37 identifying the licensee and stating that the licensee is not the
38 lender in the transaction but has contracted to provide soliciting,
39 processing, or underwriting services for the lender. Separate
40 schedules of the number and principal amount of the loans

1 processed and underwritten shall be included in the licensee's
2 annual report required by subdivision (a) of Section 50401.

3 (b) The act of soliciting other institutional lenders with whom
4 a *residential mortgage lender* licensee has concluded an agency
5 contract pursuant to paragraph (2) of subdivision (a) for placement
6 of a loan upon declination of that loan by another institutional
7 lender contracted under paragraph (2) of subdivision (a), constitutes
8 brokerage services, and may be pursued by the licensee only
9 following execution of a loan brokerage agreement with the
10 borrower as provided in this division.

11 *SEC. 63. Section 50130 of the Financial Code is amended to*
12 *read:*

13 50130. (a) A mortgage servicer shall file an application for
14 licensure under this chapter with the commissioner to service
15 mortgage loans in this state by satisfying the requirements of this
16 chapter and the applicable provisions, as determined by the
17 commissioner, of Chapter 2 (commencing with Section 50120).

18 (b) A mortgage servicer may apply for licensure by doing all
19 of the following:

20 (1) Filing with the commissioner an application containing the
21 information required by Section 50122, and any additional
22 information the commissioner may require by rule.

23 (2) Paying the investigation and application fees required by
24 Section 50121.

25 (3) Submitting ~~the statements~~ *any information* required by
26 Section 50124.

27 (4) Complying with the applicable provisions of Chapter 2
28 (commencing with Section 50120).

29 (c) A licensee may not make or service loans secured by real
30 property pursuant to the authority of a license, or exemption from
31 licensure, under the Real Estate Law.

32 (d) The commissioner may, pursuant to Section 50321, order a
33 licensee to cease any other business conducted at any location
34 where the licensee operates under the authority of a residential
35 mortgage servicer license, if the commissioner finds that the
36 conduct of that business has facilitated evasions of this division
37 or the rules adopted pursuant to this division, or that the conduct
38 of that business is in violation of any law to which that business
39 is subject.

1 (e) A license for a business location outside this state ~~may be~~
 2 ~~issued if the licensee agrees in writing, and subject to the sole~~ *shall*
 3 *constitute an agreement by the mortgage servicer to, at the*
 4 discretion of the commissioner, ~~to~~ either (1) make the licensee's
 5 books, accounts, papers, records, and files available to the
 6 commissioner or the commissioner's representatives in this state
 7 within 10 calendar days of a request from the commissioner or,
 8 (2) pay the reasonable expenses for travel, meals, and lodging of
 9 the commissioner or the commissioner's representatives incurred
 10 during an investigation or examination made at the licensee's
 11 location outside this state.

12 (f) The commissioner shall license a mortgage servicer upon
 13 completion of the investigation and issuance of the findings
 14 required by Section 50121, subject to Sections 50123, 50125,
 15 50126, and 50127.

16 (g) A mortgage servicer licensed to service mortgage loans shall
 17 comply with all applicable requirements of California and federal
 18 law, including the Civil Code and Section 2609 of the *federal* Real
 19 Estate Settlement Procedures Act of 1974, as amended (12
 20 ~~U.S.C.A.~~ *U.S.C. Sec. 2601 et seq.*).

21 (h) A license shall remain in effect until suspended, surrendered,
 22 or revoked.

23 (i) *The commissioner may require an applicant or licensee to*
 24 *make some or all filings with the commissioner through the*
 25 *Nationwide Mortgage Licensing System and Registry.*

26 *SEC. 64. Chapter 3.5 (commencing with Section 50140) is*
 27 *added to Division 20 of the Financial Code, to read:*

28
 29
 30

CHAPTER 3.5. MORTGAGE LOAN ORIGINATORS

31 *50140. (a) An applicant for a license as a mortgage loan*
 32 *originator shall apply by submitting the uniform form prescribed*
 33 *for that purpose by the Nationwide Mortgage Licensing System*
 34 *and Registry. The commissioner may require the submission of*
 35 *additional information or supporting documentation to the*
 36 *department.*

37 (b) *Section 461 of the Business and Professions Code shall not*
 38 *be applicable to the Department of Corporations when using a*
 39 *national uniform application adopted or approved for use by the*

1 *Nationwide Mortgage Licensing System and Registry in connection*
2 *with the SAFE Act.*

3 *(c) The commissioner shall, by rule, establish the timelines,*
4 *fees, and assessments applicable to applicants for original*
5 *mortgage loan originator licenses, license renewals, and license*
6 *changes under this division.*

7 *(d) The commissioner may, by rule, require mortgage loan*
8 *originator licensees to pay assessments through the Nationwide*
9 *Mortgage Licensing System and Registry.*

10 *(e) In connection with an application for a license as a mortgage*
11 *loan originator, the applicant shall, at a minimum, furnish to the*
12 *Nationwide Mortgage Licensing System and Registry information*
13 *concerning the applicant's identity, including the following:*

14 *(1) Fingerprint images and related information, for purposes*
15 *of performing a federal, or both a state and federal, criminal*
16 *history background check.*

17 *(2) Personal history and experience in a form prescribed by the*
18 *Nationwide Mortgage Licensing System and Registry, including*
19 *the submission of authorization for the Nationwide Mortgage*
20 *Licensing System and Registry and the commissioner to obtain*
21 *both of the following:*

22 *(A) An independent credit report obtained from a consumer*
23 *reporting agency.*

24 *(B) Information related to any administrative, civil, or criminal*
25 *findings by any governmental jurisdiction.*

26 *(f) The commissioner may ask the Nationwide Mortgage*
27 *Licensing System and Registry to obtain state criminal history*
28 *background check information on applicants described in*
29 *subdivision (a) using the procedures set forth in subdivisions (g)*
30 *and (h).*

31 *(g) If the Nationwide Mortgage Licensing System and Registry*
32 *electronically submits fingerprint images and related information,*
33 *as required by the Department of Justice, for an applicant for a*
34 *mortgage loan originator license, for the purposes of obtaining*
35 *information as to the existence and content of a record of state*
36 *convictions and state arrests and to the existence and content of*
37 *a record of state arrests for which the Department of Justice*
38 *establishes that the person is free on bail or on his or her*
39 *recognizance pending trial or appeal, the Department of Justice*
40 *shall provide an electronic response to the Nationwide Mortgage*

1 *Licensing System and Registry pursuant to paragraph (1) of*
2 *subdivision (p) of Section 11105 of the Penal Code, and shall*
3 *provide the same electronic response to the commissioner.*

4 *(h) The Nationwide Mortgage Licensing System and Registry*
5 *may request from the Department of Justice subsequent arrest*
6 *notification service, as provided pursuant to Section 11105.2 of*
7 *the Penal Code, for persons described in subdivision (a). The*
8 *Department of Justice shall provide the same electronic response*
9 *to the commissioner.*

10 *(i) The Department of Justice shall charge a fee sufficient to*
11 *cover the cost of processing the requests described in this section.*

12 *50141. The commissioner shall not issue a mortgage loan*
13 *originator license unless the commissioner makes at a minimum*
14 *the following findings:*

15 *(a) The applicant has never had a mortgage loan originator*
16 *license revoked in any governmental jurisdiction, except that a*
17 *subsequent formal vacation or set aside of such revocation shall*
18 *not be deemed a revocation.*

19 *(b) The applicant has not been convicted of, or pled guilty or*
20 *nolo contendere to, a felony in a domestic, foreign, or military*
21 *court during the seven-year period preceding the date of the*
22 *application for licensing and registration, or at any time preceding*
23 *the date of application, if such felony involved an act of fraud,*
24 *dishonesty, a breach of trust, or money laundering. For purposes*
25 *of this subdivision, any pardon of a conviction shall not constitute*
26 *a conviction.*

27 *(c) The applicant has demonstrated such financial responsibility,*
28 *character, and general fitness as to command the confidence of*
29 *the community and to warrant a determination that the mortgage*
30 *loan originator will operate honestly, fairly, and efficiently within*
31 *the purposes of this division.*

32 *(d) The applicant has completed the prelicensing education*
33 *requirement described in Section 50142.*

34 *(e) The applicant has passed a written test that meets the test*
35 *requirements described in Section 50143.*

36 *(f) The applicant is employed by, and subject to the supervision*
37 *of, a residential mortgage lender or servicer that has obtained a*
38 *license from the commissioner pursuant to this division.*

1 (g) *The surety bond of the residential mortgage lender or*
2 *servicer employing the applicant covers the activities of the*
3 *applicant and meets the requirements of Section 50205.*

4 50142. (a) *An applicant for a mortgage loan originator license*
5 *shall complete at least 20 hours of education approved in*
6 *accordance with subdivision (b). The education shall include at*
7 *least the following:*

8 (1) *Three hours of instruction on federal law and regulations.*

9 (2) *Three hours of ethics, which shall include instruction on*
10 *fraud, consumer protection, and fair lending issues.*

11 (3) *Two hours of training related to lending standards for the*
12 *nontraditional mortgage product marketplace.*

13 (b) *For purposes of subdivision (a), prelicensing education*
14 *courses shall be reviewed and approved by the Nationwide*
15 *Mortgage Licensing System and Registry. Review and approval*
16 *of a prelicensing education course shall include review and*
17 *approval of the course provider.*

18 (c) *Nothing in this section shall preclude any prelicensing*
19 *education course approved by the Nationwide Mortgage Licensing*
20 *System and Registry that is provided by the employer of the*
21 *applicant or an entity that is affiliated with the applicant by an*
22 *agency contract, or any subsidiary or affiliate of the employer or*
23 *entity.*

24 (d) *Prelicensing education may be offered either in a classroom,*
25 *online, or by any other means approved by the Nationwide*
26 *Mortgage Licensing System and Registry.*

27 (e) *The prelicensing education requirements approved by the*
28 *Nationwide Mortgage Licensing System and Registry for any state*
29 *other than California shall be accepted as credit toward completion*
30 *of prelicensing education requirements in California.*

31 (f) *An individual previously licensed under this chapter applying*
32 *to be licensed again must prove that he or she has completed all*
33 *of the continuing education requirements for the year in which*
34 *that individual last held the license.*

35 50143. (a) *An applicant for a mortgage loan originator license*
36 *shall pass a qualified written test developed by the Nationwide*
37 *Mortgage Licensing System and Registry and administered by a*
38 *test provider approved by the Nationwide Mortgage Licensing*
39 *System and Registry.*

1 (b) A written test shall not be treated as a qualified written test
2 for purposes of subdivision (a) unless the test adequately measures
3 the applicant's knowledge and comprehension in appropriate
4 subject areas, including the following:

5 (1) Ethics.

6 (2) Federal law and regulation relating to mortgage origination.

7 (3) State law and regulation relating to mortgage origination.

8 (4) Federal and state law and regulation, including instruction
9 on fraud, consumer protection, the nontraditional mortgage
10 marketplace, and fair lending issues.

11 (c) Nothing in this section shall prohibit a test provider approved
12 by the Nationwide Mortgage Licensing System and Registry from
13 providing a test at the location of the employer of the applicant or
14 the location of any subsidiary or affiliate of the employer of the
15 applicant, or the location of any entity with which the applicant
16 holds an exclusive arrangement to conduct the business of a
17 mortgage loan originator.

18 (d) (1) An individual shall not be considered to have passed a
19 qualified written test unless the individual achieves a test score of
20 not less than 75 percent of correct answers to questions.

21 (2) An individual who fails the qualified written test may retake
22 the test up to three consecutive times, although at least 30 days
23 shall pass between each retesting.

24 (3) An applicant who fails three consecutive retests shall wait
25 at least six months before retesting.

26 (4) A licensed mortgage loan originator who fails to maintain
27 a valid license for a period of five years or longer shall retake the
28 test, not taking into account any time during which the individual
29 is a registered mortgage loan originator.

30 50144. (a) A mortgage loan originator shall comply with the
31 requirements of this section on or before December 31 of every
32 year.

33 (b) The minimum standards for license renewal for mortgage
34 loan originators shall include the following:

35 (1) The mortgage loan originator continues to meet the minimum
36 standards for license issuance under Section 50141.

37 (2) The mortgage loan originator has satisfied the annual
38 continuing education requirements described in Section 50145.

1 (3) *The mortgage loan originator, or the residential mortgage*
2 *lender or servicer employing the mortgage loan originator, has*
3 *paid all required fees for renewal of the license.*

4 (4) *The license of a mortgage loan originator failing to satisfy*
5 *the minimum standards for license renewal shall expire at midnight*
6 *on January 31, except as provided in Section 50145. The*
7 *commissioner may adopt procedures for the reinstatement of*
8 *expired licenses consistent with the standards established by the*
9 *Nationwide Mortgage Licensing System and Registry.*

10 50145. (a) *A licensed mortgage loan originator shall complete*
11 *at least eight hours of continuing education approved in*
12 *accordance with subdivision (b). The continuing education shall*
13 *include at least the following:*

14 (1) *Three hours of instruction on federal law and regulations.*

15 (2) *Two hours of ethics, which shall include instruction on fraud,*
16 *consumer protection, and fair lending issues.*

17 (3) *Two hours of training related to lending standards for the*
18 *nontraditional mortgage product marketplace.*

19 (b) *For purposes of subdivision (a), continuing education*
20 *courses shall be reviewed and approved by the Nationwide*
21 *Mortgage Licensing System and Registry. Review and approval*
22 *of a continuing education course shall include review and approval*
23 *of the course provider.*

24 (c) *Nothing in this section shall preclude any education course*
25 *approved by the Nationwide Mortgage Licensing System and*
26 *Registry that is provided by the employer of the mortgage loan*
27 *originator or an entity that is affiliated with the mortgage loan*
28 *originator by an agency contract, or any subsidiary or affiliate of*
29 *the employer or entity.*

30 (d) *Continuing education may be offered either in a classroom,*
31 *online, or by any other means approved by the Nationwide*
32 *Mortgage Licensing System and Registry.*

33 (e) *Except as provided in subdivision (i), a licensed mortgage*
34 *loan originator:*

35 (1) *May only receive credit for a continuing education course*
36 *in the year in which the course is taken.*

37 (2) *May not take the same approved course in the same or*
38 *successive years to meet the annual requirements for continuing*
39 *education.*

1 (f) A licensed mortgage loan originator who is an approved
2 instructor of an approved continuing education course may receive
3 credit for the licensed mortgage loan originator's own annual
4 continuing education requirement at the rate of two hours credit
5 for every one hour taught.

6 (g) A person who has successfully completed continuing
7 education requirements approved by the Nationwide Mortgage
8 Licensing System and Registry for any state other than California
9 shall be granted credit toward completion of continuing education
10 requirements in California.

11 (h) A licensed mortgage loan originator who subsequently
12 becomes unlicensed shall complete the continuing education
13 requirements for the last year in which the license was held prior
14 to issuance of a new or renewed license.

15 (i) A person meeting the requirements of paragraphs (1) and
16 (3) of subdivision (b) of Section 50144 may correct any deficiency
17 in continuing education as established by rule or regulation of the
18 commissioner.

19 50146. In addition to any other duties imposed upon the
20 commissioner by law, the commissioner shall require mortgage
21 loan originators to be licensed and registered through the
22 Nationwide Mortgage Licensing System and Registry. In order to
23 carry out this requirement the commissioner is authorized to
24 participate in the Nationwide Mortgage Licensing System and
25 Registry. For this purpose, the commissioner may establish by
26 rule, regulation, or order, requirements as necessary, including,
27 but not limited to, the following:

28 (a) Background checks for:

29 (1) Criminal history through fingerprint or other databases.

30 (2) Civil or administrative records.

31 (3) Credit history.

32 (4) Any other information as deemed necessary by the
33 Nationwide Mortgage Licensing System and Registry or the
34 commissioner.

35 (b) The payment of fees to apply for or renew licenses through
36 the Nationwide Mortgage Licensing System and Registry.

37 (c) The setting or resetting as necessary of renewal or reporting
38 dates.

39 (d) Requirements for amending or surrendering a license or
40 any other activities as the commissioner deems necessary for

1 participation in the Nationwide Mortgage Licensing System and
2 Registry.

3 SEC. 65. Chapter 3.6 (commencing with Section 50150) is
4 added to Division 20 of the Financial Code, to read:

5

6 CHAPTER 3.6. NATIONWIDE MORTGAGE LICENSING SYSTEM
7 AND REGISTRY

8

9 50150. (a) The commissioner is authorized to establish
10 relationships or contracts with the Nationwide Mortgage Licensing
11 System and Registry or other entities designated by the Nationwide
12 Mortgage Licensing System and Registry to collect and maintain
13 records and process transaction fees or other fees related to
14 licensees or other persons subject to this division.

15 (b) For the purpose of participating in the Nationwide Mortgage
16 Licensing System and Registry, the commissioner is authorized to
17 waive or modify, in whole or in part, by rule, regulation, or order,
18 any or all of the requirements of this division and to establish new
19 requirements as reasonably necessary to participate in the
20 Nationwide Mortgage Licensing System and Registry.

21 (c) The commissioner may use the Nationwide Mortgage
22 Licensing System and Registry as a channeling agent for requesting
23 information from, and distributing information to, the Department
24 of Justice or any governmental agency.

25 (d) The commissioner may use the Nationwide Mortgage
26 Licensing System and Registry as a channeling agent for requesting
27 and distributing information to and from any source so directed
28 by the commissioner.

29 (e) The commissioner shall establish a process where applicants
30 and licensees may challenge information entered into the
31 Nationwide Mortgage Licensing System and Registry by the
32 commissioner.

33 50151. (a) Except as otherwise provided in Section 1512 of
34 the SAFE Act, the requirements under any federal law or the
35 Information Practices Act (Chapter 1 (commencing with Section
36 1798) of Part 4 of Division 3 of the Civil Code) regarding the
37 privacy or confidentiality of any information or material provided
38 to the Nationwide Mortgage Licensing System and Registry, and
39 any privilege arising under federal or state law, including the rules
40 of any federal or state court, with respect to that information or

1 *material, shall continue to apply to the information or material*
2 *after the information or material has been disclosed to the*
3 *Nationwide Mortgage Licensing System and Registry. The*
4 *information and material may be shared with all state and federal*
5 *regulatory officials with mortgage industry oversight authority*
6 *without the loss of privilege or the loss of confidentiality*
7 *protections provided by federal law or the Information Practices*
8 *Act.*

9 *(b) Information or material that is subject to a privilege or*
10 *confidentiality under subdivision (a) shall not be subject to the*
11 *following:*

12 *(1) Disclosure under any federal or state law governing the*
13 *disclosure to the public of information held by an officer or an*
14 *agency of the federal government or the state.*

15 *(2) Subpoena or discovery, or admission into evidence, in any*
16 *private civil action or administrative process, unless with respect*
17 *to any privilege held by the Nationwide Mortgage Licensing System*
18 *and Registry with respect to the information or material, the person*
19 *to whom the information or material pertains waives, in whole or*
20 *in part, in the discretion of that person, that privilege.*

21 *(c) This section shall not apply with respect to the information*
22 *or material relating to the employment history of, and publicly*
23 *adjudicated disciplinary and enforcement actions against,*
24 *mortgage loan originators that is included in the Nationwide*
25 *Mortgage Licensing System and Registry for access by the public.*

26 *50152. The commissioner shall report regularly violations of*
27 *this division, as well as enforcement actions and other relevant*
28 *information, to the Nationwide Mortgage Licensing System and*
29 *Registry, to the extent that information is public record.*

30 *SEC. 66. Section 50200 of the Financial Code is amended to*
31 *read:*

32 *50200. (a) At the end of the licensee's fiscal year, but in no*
33 *case more than 12 months after the last audit conducted pursuant*
34 *to this section, each licensed residential mortgage-lieensee lender*
35 *or servicer shall cause its books and accounts to be audited by an*
36 *independent certified public accountant. Beginning with all audits*
37 *of business conducted after December 31, 1995, the audit shall be*
38 *sufficiently comprehensive in scope to permit the expression of*
39 *an opinion on the financial statements prepared in accordance with*
40 *generally accepted accounting principles and shall be performed*

1 in accordance with generally accepted auditing standards. The
2 audit shall include a reconciliation of the licensee's trust accounts
3 as of the audit date.

4 (b) "Expression of an opinion" includes (1) an unqualified
5 opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4)
6 an adverse opinion. If a financial statement, report, certificate, or
7 opinion of the independent certified public accountant is in any
8 way qualified, the commissioner may require the licensee to take
9 any action that the commissioner deems appropriate to address the
10 qualification. The commissioner may reject any financial statement,
11 report, certificate, or opinion by notifying the licensee or other
12 person required to make the filing of the rejection and the reason
13 therefor. Within 30 days after the receipt of the notice, the licensee
14 or other person shall correct the deficiencies. Failure to correct the
15 deficiencies is a violation of this division. The commissioner shall
16 retain a copy of all financial statements, reports, certificates, or
17 opinions so rejected.

18 (c) If a qualified or adverse opinion is expressed or if an opinion
19 is disclaimed, the reasons therefor must be fully explained.

20 (d) The audit report shall be filed with the commissioner within
21 105 days of the end of the licensee's fiscal year. The report filed
22 with the commissioner shall be certified by the certified public
23 accountant conducting the audit. The commissioner may
24 promulgate rules regarding late audit reports.

25 (e) If a licensee required to make an audit fails to cause an audit
26 to be made, the commissioner may cause the audit to be made by
27 an independent certified public accountant at the licensee's
28 expense. The commissioner shall select the independent certified
29 public accountant by advertising for bids or by other fair and
30 impartial means that the commissioner establishes by rule. The
31 commissioner may summarily revoke the license of a licensee who
32 fails to file a certified financial statement prepared by an
33 independent certified public accountant as required by this division
34 or at the request of the commissioner.

35 (f) Audits conducted in accordance with the uniform single audit
36 procedures of the United States Department of Housing and Urban
37 Development may be submitted in fulfillment of the requirements
38 of this section.

39 *SEC. 67. Section 50201 of the Financial Code is amended to*
40 *read:*

1 50201. (a) A licensee issued a license for purposes of making
2 or servicing residential mortgage ~~loans shall~~ *loans, including a*
3 *licensee employing one or more mortgage loan originators, shall*
4 *continuously* maintain a minimum tangible net worth at all times
5 of two hundred fifty thousand dollars (\$250,000).

6 (b) Tangible net worth shall be computed in accordance with
7 generally accepted accounting principles.

8 (c) *The commissioner may promulgate rules or regulations with*
9 *respect to the requirements for minimum net worth, as are*
10 *necessary to accomplish the purposes of this division and comply*
11 *with the SAFE Act.*

12 SEC. 68. *Section 50202 of the Financial Code is amended to*
13 *read:*

14 50202. (a) Escrow funds for a purpose authorized by the
15 residential mortgage loan contract (1) shall be subject to and satisfy
16 all applicable state and federal requirements, including Section
17 2609 of the *federal* Real Estate Settlement Procedures Act of 1974,
18 as amended (~~12-U.S.C.A.~~ *U.S.C. Sec. 2601 et seq.*) and all
19 applicable provisions of the Civil Code, (2) shall be maintained
20 in a depository institution as described in subdivision (b), and (3)
21 may not be commingled with a licensee's funds.

22 (b) Except as provided in subdivision (f), a trust account shall
23 be placed in a non-interest-bearing account in a federally insured
24 depository institution, a federal home loan bank, a federal reserve
25 bank, or other similar government-sponsored enterprise, to be
26 removed and used only for the following:

27 (1) Payments authorized by the borrower, allowed by the
28 mortgage loan contract, or required by federal or state law.

29 (2) Refunds to the borrower.

30 (3) Transfer to another institution that is described in this
31 subdivision.

32 (4) Forwarding to the appropriate servicer in case of a transfer
33 of servicing.

34 (5) Any other purpose authorized by the residential mortgage
35 loan contract.

36 (6) Compliance with a regulatory or court order.

37 (c) As used in this section, "trust funds" means funds collected
38 by a licensee in connection with the making or servicing of a
39 residential mortgage loan that the licensee holds on behalf of
40 another.

1 (d) Notwithstanding any other provision of law, but subject to
2 the limitations of Section 854, benefits accruing from the placement
3 in a non-interest-bearing account of a commercial bank (including
4 a national banking association) of funds received by a licensee
5 who services mortgage loans under this law, shall inure to the
6 licensee, unless otherwise agreed in writing by the licensee and
7 the investor on whose behalf the licensee services the loan. A
8 borrower shall receive at least 2 percent simple interest per annum
9 on impound account payments covered by Section 2954.8 of the
10 Civil Code.

11 (e) Trust funds are not subject to the enforcement of a money
12 judgment arising out of a claim against the licensee or person
13 acting as the servicing agent, and in no instance shall the trust
14 funds be considered or treated as an asset of the licensee or person
15 performing the functions of a residential mortgage lender or loan
16 servicer.

17 (f) A licensee may, at the request of the owner of the trust funds,
18 transfer the funds initially deposited in a non-interest-bearing trust
19 account into an interest-bearing account in a federally insured
20 depository institution if all of the following requirements are met:

21 (1) The account is in the name of the *residential mortgage lender*
22 licensee in trust for the specified beneficiary.

23 (2) All of the funds in the account are federally insured.

24 (3) The funds in the account are kept separate and distinct from
25 the funds of the licensee or funds of any other person for whom
26 the licensee holds funds in trust.

27 (4) The licensee discloses to the person from whom the funds
28 are received and the beneficiary of the account how interest will
29 be calculated and paid, whether service charges will be paid to the
30 depository and by whom, and possible notice requirements or
31 penalties for withdrawal of funds from the account.

32 (5) All interest earned on the account will be paid to the owner
33 of the trust funds or the beneficiary.

34 *SEC. 69. Section 50204 of the Financial Code is amended to*
35 *read:*

36 50204. A licensee may not do any of the following:

37 (a) Disburse the mortgage loan proceeds in a form other than
38 direct deposit to the borrower's or borrower's designee's account,
39 wire, bank or certified check, ACH funds transfer, or attorney's
40 check drawn on a trust account. An entity may apply to the

- 1 commissioner for a waiver of the requirements of this subdivision
2 by demonstrating, in a letter application, that it has adopted or will
3 adopt another method of disbursement of loan proceeds that will
4 satisfy the purposes of this subdivision.
- 5 (b) Fail to disburse funds in accordance with a commitment to
6 make a mortgage loan that is accepted by the applicant.
- 7 (c) Accept fees at closing that are not disclosed to the borrower
8 on the federal HUD-1 Settlement Statement.
- 9 (d) Commit an act in violation of Section 2941 of the Civil
10 Code.
- 11 (e) Obtain or induce an agreement or other instrument in which
12 blanks are left to be filled in after execution.
- 13 (f) Intentionally delay closing of a mortgage loan for the sole
14 purpose of increasing interest, costs, fees, or charges payable by
15 the borrower.
- 16 (g) Engage in fraudulent home mortgage underwriting practices.
- 17 (h) Make payment of any kind, whether directly or indirectly,
18 to an in-house or fee appraiser of a government or private money
19 lending agency, with which an application for a home mortgage
20 has been filed, for the purpose of influencing the independent
21 judgment of the appraiser with respect to the value of real estate
22 that is to be covered by the home mortgage.
- 23 (i) Engage in any acts in violation of Section 17200 or 17500
24 of the Business and Professions Code.
- 25 (j) Knowingly misrepresent, circumvent, or conceal, through
26 subterfuge or device, any material aspect or information regarding
27 a transaction to which it is a party.
- 28 (k) Do an act, whether of the same or a different character than
29 specified in this section, that constitutes fraud or dishonest dealings.
- 30 (l) Sell more than eight loans in a calendar year made under the
31 authority of this license to a person who is not an institutional
32 investor.
- 33 (m) Commit an act in violation of Section 1695.13 of the Civil
34 Code.
- 35 (n) Make or service a loan that is not a residential mortgage
36 loan under the authority of the license.
- 37 (o) Commit an act in violation of Section 2948.5 of the Civil
38 Code. Evidence of compliance with Section 2948.5 of the Civil
39 Code may be evidenced by (1) a certification executed by the
40 licensee, at no cost to the borrower, pursuant to Section 2015.5 of

1 the Code of Civil Procedure, or (2) other evidence in the loan file
2 acceptable to the commissioner.

3 *(p) Make or broker a loan that is offered by, negotiated by, or*
4 *applied for through a mortgage loan originator who is not licensed*
5 *in this state through the Nationwide Mortgage Licensing System*
6 *and Registry, unless the mortgage loan originator is exempt from*
7 *licensure.*

8 *SEC. 70. Section 50205 of the Financial Code is amended to*
9 *read:*

10 50205. (a) *A residential mortgage lender or servicer licensee*
11 *shall maintain a surety bond in accordance with this subdivision.*
12 *The bond shall be used for the recovery of expenses, fines, and*
13 *fees levied by the commissioner in accordance with this division*
14 *or for losses or damages incurred by borrowers or consumers as*
15 *the result of a licensee's noncompliance with the requirements of*
16 *this division. The bond shall be payable when the licensee fails to*
17 *comply with a provision of this division and shall be in the amount*
18 *of fifty thousand dollars (\$50,000), and may be increased by order*
19 *of the commissioner to one hundred thousand dollars (\$100,000)*
20 *upon a determination by the commissioner that the licensee is not*
21 *in compliance with any provision of this chapter or any rule or*
22 *order adopted or issued by the commissioner to implement or*
23 *enforce provisions of this chapter. The bond shall be payable to*
24 *the commissioner and issued by an insurance company authorized*
25 *to do business in this state. An original surety bond, including any*
26 *and all riders and endorsements executed subsequent to the*
27 *effective date of the bond, shall be filed with the commissioner*
28 *within 10 days of its execution.*

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

36 *(c) The commissioner shall by rule require a higher bond*
37 *amount for a licensee employing one or more mortgage loan*
38 *originators, based on the dollar amount of residential mortgage*
39 *loans originated by that licensee and any mortgage loan*
40 *originators employed by that licensee. Every mortgage loan*

1 *originator employed by the licensee shall be covered by the surety*
2 *bond.*

3 *SEC. 71. Section 50206 of the Financial Code is amended to*
4 *read:*

5 50206. (a) Prior to a change of control of the business of a
6 licensee, the person wishing to acquire control shall submit ~~a~~
7 ~~written~~ *an* application to the commissioner and pay an investigation
8 fee of one hundred dollars (\$100). The application shall contain
9 the information that the commissioner, by rule, may prescribe as
10 necessary to determine that the person meets the requirements of
11 Section 50121.

12 (b) The commissioner shall approve or disapprove the proposed
13 change of control of a licensee in accordance with the provisions
14 of Section 50126.

15 (c) Upon notification by the commissioner that the change of
16 control has been disapproved, the acquiring party shall immediately
17 cease any activity subject to regulation under this division.

18 *SEC. 72. Section 50208 of the Financial Code is amended to*
19 *read:*

20 50208. The license shall state the name of the licensee. If the
21 licensee is a partnership, the license shall state the names of its
22 general partners. If the licensee is a corporation or an association,
23 the license shall state the date and place of the ~~corporation's~~
24 ~~corporation's~~ incorporation or ~~organization and~~ *organization*. *If*
25 *the licensee is a residential mortgage lender or servicer, the license*
26 *shall state the address of the licensee's principal business*
27 *location. The license shall state whether the licensee is licensed*
28 *as a residential mortgage loan lender or servicer or as a mortgage*
29 *loan originator.*

30 *SEC. 73. Section 50209 is added to the Financial Code, to*
31 *read:*

32 50209. *The unique identifier of any licensed mortgage loan*
33 *originator shall be clearly shown on all residential mortgage loan*
34 *application forms, solicitations, or advertisements, including*
35 *business cards or Internet Web sites, and any other documents as*
36 *established by rule, regulation, or order of the commissioner.*

37 *SEC. 74. Section 50302 of the Financial Code is amended to*
38 *read:*

39 50302. (a) As often as the commissioner deems necessary and
40 appropriate, but at least once every 48 months, the commissioner

1 shall examine the affairs of each *residential mortgage lender and*
2 *servicer* licensee for compliance with this division. The
3 commissioner shall appoint suitable persons to perform the
4 examination. The commissioner and his or her appointees may
5 examine the books, records, and documents of the licensee, and
6 may examine the licensee's officers, directors, employees, or agents
7 under oath regarding the licensee's operations. The commissioner
8 may cooperate with any agency of the state or federal government,
9 other states, agencies, the ~~federal national mortgage association,~~
10 ~~or the federal home loan mortgage corporation.~~ *Federal National*
11 *Mortgage Association, or the Federal Home Loan Mortgage*
12 *Corporation.* The commissioner may accept an examination
13 conducted by one of these entities in place of an examination by
14 the commissioner under this law, unless the commissioner
15 determines that the examination does not provide information
16 necessary to enable the commissioner to fulfill his or her
17 responsibilities under this division.

18 (b) The commissioner shall provide a written statement of the
19 findings of the examination, issue a copy of that statement to each
20 licensee's principals, officers, or directors, and take appropriate
21 steps to ensure correction of any violations of this division.

22 (c) Affiliates of a licensee are subject to examination by the
23 commissioner on the same terms as the licensee, but only when
24 reports from, or examination of, a licensee provides documented
25 evidence of unlawful activity between a licensee and affiliate
26 benefiting, affecting, or arising from the activities regulated by
27 this division.

28 (d) The *residential mortgage lender and servicer* licensee shall
29 pay, and the commissioner shall assess, the reasonable expenses
30 of any examination of the licensee and affiliates, consistent with
31 the requirements of subdivision (c) of Section 50314.

32 (e) The statement of the findings of an examination shall belong
33 to the commissioner and shall not be disclosed to anyone other
34 than the licensee, law enforcement officials, or other state or federal
35 regulatory agencies for further investigation and enforcement.
36 Reports required of licensees by the commissioner under this
37 division and results of examinations performed by the
38 commissioner under this division are the property of the
39 commissioner.

1 *SEC. 75. Section 50307 of the Financial Code is amended to*
2 *read:*

3 50307. (a) Each *residential mortgage lender and servicer*
4 licensee shall file a report with the commissioner annually, on or
5 before the first day of March, giving the relevant information that
6 the commissioner reasonably requires to make the calculation
7 required by subdivision (a) of Section 50401. The report shall be
8 made under oath and in the form prescribed by the commissioner.

9 (b) A licensee shall make any other special reports to the
10 commissioner that the commissioner may, from time to time,
11 require.

12 (c) If any ~~person~~ *licensed residential mortgage lender or*
13 *servicer* subject to this division fails to make a report required by
14 law or by the commissioner, the commissioner may immediately
15 cause the books, records, papers, and affairs of that ~~person~~ *licensee*
16 to be thoroughly examined.

17 *SEC. 76. Section 50307.2 is added to the Financial Code, to*
18 *read:*

19 50307.2. *The commissioner may require a licensee that employs*
20 *one or more mortgage loan originators to submit to the Nationwide*
21 *Mortgage Licensing System and Registry reports of condition,*
22 *which shall be in such form and shall contain such information as*
23 *the Nationwide Mortgage Licensing System and Registry may*
24 *require.*

25 *SEC. 77. Section 50310 of the Financial Code is amended to*
26 *read:*

27 50310. Nothing in this law shall preclude a person, *other than*
28 *a mortgage loan originator*, whose license has been suspended or
29 revoked, summarily or otherwise, from continuing to service
30 residential mortgage loans pursuant to servicing contracts in
31 existence at the time of the suspension for a reasonable transition
32 period, as determined by the commissioner, after the date of the
33 entry of the final decision in the case suspending or revoking the
34 license.

35 *SEC. 78. Section 50317 of the Financial Code is amended to*
36 *read:*

37 50317. (a) Any person who has been convicted of, or pleaded
38 nolo contendere to any crime specified in subdivision (b) within
39 the past 10 years or has been held liable in any civil action by final
40 judgment or any administrative judgment by any public agency

1 within the past seven years, of any of the provisions specified in
2 subdivision (b), shall not serve as an officer, director, partner,
3 shareholder controlling 10 percent or more of the ownership
4 interests, trustee, or employee of a residential mortgage lender or
5 residential mortgage loan servicer. This subdivision shall not apply
6 to any person whose office, employment, ownership interest, or
7 other participation in the business of a licensed residential mortgage
8 lender or residential mortgage loan servicer commenced prior to
9 January 1, 1995, or whose criminal conviction, plea, or judgment
10 occurred prior to January 1, 1995.

11 (b) Subdivision (a) applies to criminal convictions of, pleas of
12 nolo contendere to, or civil or administrative judgments entered
13 for offenses including the following:

14 (1) Offenses specified in Chapter 18 (commencing with Section
15 3350) of Division 1.

16 (2) Offenses specified in Article 4 (commencing with Section
17 5300) of Chapter 1 of Division 2.

18 (3) Offenses specified in Article 8 (commencing with Section
19 14750) of Chapter 4 of Division 5.

20 (4) Offenses specified in Chapter 7 (commencing with Section
21 17700) of Division 6.

22 (5) Offenses specified in Chapter 6 (commencing with Section
23 18435) of Division 7.

24 (6) Offenses specified in provisions of the laws of the United
25 States added or amended by the federal Financial Institutions
26 Reform, Recovery and Enforcement Act of 1989 (Public Law
27 101-73).

28 (7) Offenses involving robbery, burglary, theft, embezzlement,
29 fraud, fraudulent conversion or misappropriation of property,
30 forgery, bookmaking, receiving stolen property, counterfeiting,
31 extortion, checks, credit cards, or computer violations specified
32 in Section 502 of the Penal Code. For the purpose of this section,
33 but not Section 50318, an offense does not include a conviction
34 for which the person has obtained a certificate of rehabilitation
35 from a court of competent jurisdiction under Section 1203.4 or
36 4852.13 of the Penal Code or a similar certificate of rehabilitation
37 obtained in a foreign jurisdiction.

38 (c) On and after January 1, 1995, any officer, director, or other
39 person who seeks a controlling ownership interest of 10 percent
40 or more in the business of a licensed residential mortgage lender

1 or residential mortgage loan servicer shall, as a condition to
2 obtaining that interest or participation, authorize the commissioner
3 to have access to that person's state summary criminal history
4 information, as defined in Section 11105 of the Penal Code, for
5 purposes of determining whether the person has a prior conviction
6 of, or pleaded nolo contendere to, a criminal offense specified in
7 subdivision (b).

8 (d) Any state summary criminal history information obtained
9 pursuant to this section shall be kept confidential and no recipient
10 shall disclose the contents other than for the purpose of acquisition
11 of an ownership interest in or other participation in the business
12 of a licensed residential mortgage lender or residential mortgage
13 loan servicer.

14 (e) Any person who knowingly violates subdivision (a),
15 including, but not limited to, any residential mortgage lender or
16 residential mortgage loan servicer who permits an ownership
17 interest in or other participation in the business of a residential
18 mortgage lender or residential mortgage loan servicer in violation
19 of subdivision (a) shall, upon conviction, be subject to punishment
20 as set forth in Section 50500.

21 (f) Nothing in this section shall be construed to permit the
22 reinstatement of any person barred by the commissioner pursuant
23 to Section 50320 nor to prohibit the commissioner from bringing
24 any action pursuant to Section 50320.

25 (g) If any provision of this section or the application of this
26 section to any person or circumstances is held invalid, that
27 invalidity shall not affect other provisions or applications of this
28 section that can be given effect without the invalid provision or
29 application, and to this end the provisions of this section are
30 severable.

31 (h) For purposes of this section, the term "employee" means
32 (1) a ~~loan~~ mortgage loan originator, including a loan officer or
33 other individual who negotiates agreements with the public, or (2)
34 an individual with access to or responsibility for trust funds held
35 by the licensee.

36 *SEC. 79. Section 50318 of the Financial Code is amended to*
37 *read:*

38 50318. (a) The commissioner may, after appropriate notice
39 and opportunity for hearing, by order censure or suspend for a
40 period not exceeding 12 months, or bar from any position of

1 employment, management, or control any residential mortgage
2 ~~lender or lender~~, residential mortgage loan servicer, or *mortgage*
3 *loan originator*, or any other person, if the commissioner finds
4 either of the following:

5 (1) That the censure, suspension, or bar is in the public interest
6 and that the person has committed or caused a violation of this
7 division or rule or order of the commissioner, and (A) the violation
8 was either known or should have been known by the person
9 committing or causing it, or (B) the violation has caused material
10 damage to the residential mortgage lender, residential mortgage
11 loan servicer, *mortgage loan originator*, or to the public.

12 (2) That the person (A) has been convicted of or pleaded nolo
13 contendere to any crime, or (B) has been held liable in any civil
14 action by final judgment, or any administrative judgment by any
15 public agency, if that crime or civil or administrative judgment
16 involved any offense specified in subdivision (b) of Section 50317,
17 or any other offense reasonably related to the qualifications,
18 functions, or duties of a person engaged in the business in
19 accordance with the provisions of this division.

20 (b) Within 15 days from the date of a notice of intention to issue
21 an order pursuant to subdivision (a), the person may request a
22 hearing under the Administrative Procedure Act (Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title
24 2 of the Government Code). Upon receiving a request, the matter
25 shall be set for hearing to commence within 30 days after receipt
26 unless the person subject to this division consents to a later date.
27 If no hearing is requested within 15 days after the mailing or
28 service of the notice and none is ordered by the commissioner, the
29 failure to request a hearing shall constitute a waiver of the right to
30 a hearing.

31 (c) Upon receipt of a notice of intention to issue an order
32 pursuant to this section, the person who is the subject of the
33 proposed order is immediately prohibited from engaging in any
34 activities subject to licensure under the law.

35 (d) Persons suspended or barred under this section are prohibited
36 from participating in any business activity of a licensed residential
37 mortgage ~~lender or lender~~, residential mortgage loan servicer, or
38 *mortgage loan originator* and from engaging in any business
39 activity on the premises where a licensed residential mortgage
40 ~~lender or lender~~, residential mortgage loan servicer, or *mortgage*

1 *loan originator* is conducting its business. This subdivision shall
 2 not be construed to prohibit suspended or barred persons from
 3 having their personal transactions processed by a licensed
 4 residential mortgage ~~lender or lender~~, residential mortgage loan
 5 servicer, *or mortgage loan originator*.

6 (e) This section shall apply to any violation, conviction, plea,
 7 or judgment after the enactment of this section.

8 (f) If any provision of this section or the application of this
 9 section to any person or circumstances is held invalid, that
 10 invalidity shall not affect other provisions or applications of this
 11 section that can be given effect without the invalid provision or
 12 application, and to this end the provisions of this section are
 13 severable.

14 (g) For purposes of this section, the term “employee” means
 15 (1) a *mortgage loan originator, including a loan officer or other*
 16 individual who negotiates agreements with the public, or (2) an
 17 individual with access to or responsibility for trust funds held by
 18 the licensee.

19 *SEC. 80. Section 50320 of the Financial Code is amended to*
 20 *read:*

21 50320. Whenever, in the opinion of the commissioner, a person
 22 is engaged, either actually or through subterfuge, in the business
 23 of making residential mortgage ~~loans or loans~~, servicing residential
 24 mortgage loans, *or engaging in business as a mortgage loan*
 25 *originator*, without a license from the commissioner, the
 26 commissioner may order that person to desist and refrain. If, within
 27 30 days after an order is served, a request for a hearing is filed in
 28 writing and the hearing is not held within 60 days of the filing, the
 29 order is rescinded. This section does not apply to persons exempted
 30 under subdivision ~~(g)~~ (b) of Section ~~50003~~. 50002.

31 *SEC. 81. Section 50325 of the Financial Code is amended to*
 32 *read:*

33 50325. The commissioner may immediately revoke the
 34 residential mortgage ~~lender’s or lender’s~~, residential mortgage
 35 loan servicer’s, *or mortgage loan originator’s* license if the licensee
 36 fails to comply with any order issued under Section 50318, 50319,
 37 50321, 50322, or 50503. The commissioner shall not revoke the
 38 license if, within 10 days from the effective date of the revocation
 39 order, the licensee secures a court order restraining the enforcement
 40 of the commissioner’s revocation order.

1 SEC. 82. *Section 50333 of the Financial Code is amended to*
2 *read:*

3 50333. (a) The commissioner shall apply the guidance on
4 nontraditional mortgage product risks published on November 14,
5 2006, by the Conference of State Bank Supervisors and the
6 American Association of Residential Mortgage Regulators, and
7 the Statement on Subprime Mortgage Lending published on July
8 17, 2007, by the aforementioned entities and the National
9 Association of Consumer Credit Administrators, to licensees.

10 (b) The commissioner may adopt emergency and final rules to
11 clarify the application of this section as soon as possible.

12 (c) A licensee shall adopt and adhere to policies and procedures
13 that are reasonably intended to achieve the objectives set forth in
14 the documents described in subdivision (a). *A licensed mortgage*
15 *loan originator shall adhere to policies and procedures developed*
16 *by his or her employer in accordance with this division and*
17 *applicable federal law and regulation.*

18 SEC. 83. *Section 50401 of the Financial Code is amended to*
19 *read:*

20 50401. (a) In addition to other fees and reimbursements
21 required to be paid under this division, each *residential mortgage*
22 *lender or servicer* licensee shall pay to the commissioner an amount
23 equal to the lesser of: (1) its pro rata share of all costs and expenses
24 (including overhead and the maintenance of a prudent reserve not
25 to exceed 90 days' costs and expenses) that the commissioner
26 reasonably expects to incur in the current fiscal year in the
27 administration of this division and not otherwise recovered by the
28 commissioner under this division or from the State Corporations
29 Fund, plus a deficit or less a surplus actually incurred during the
30 prior fiscal year; or (2) five thousand dollars (\$5,000). The pro
31 rata share shall be the greater of either one thousand dollars
32 (\$1,000) or the sum of: (A) a number derived from the ratio of the
33 aggregate principal amount of the mortgage loans secured by
34 residential real property originated by the licensee to all mortgage
35 loans secured by residential real property originated by all licensees
36 under this division, as shown by the annual financial reports to the
37 commissioner, which number is then multiplied by one-half of the
38 costs and expenses estimated by the commissioner for the current
39 fiscal year; plus (B) a number derived from the ratio of the average
40 value of mortgage loans secured by residential real property

1 serviced by a licensee to the average value of all mortgage loans
2 secured by residential real property serviced by all licensees under
3 this division, as shown by the annual financial reports to the
4 commissioner, which number is then multiplied by one-half of the
5 costs and expenses estimated by the commissioner for the current
6 fiscal year. For the purposes of this section, the “principal amount”
7 of a mortgage loan means the initial total amount a borrower is
8 obligated to repay the lender and the “average value” of loans
9 serviced means the sum of the aggregate dollar value of all
10 mortgage loans secured by residential real property serviced by a
11 licensee, calculated as of the last day of each month in the calendar
12 year just ended, divided by 12.

13 In order for the commissioner to calculate the assessment under
14 this section, each licensee shall file an annual report for the
15 calendar year just ended containing the information required by
16 the commissioner on or before March 1 of the year in which the
17 assessment is to be calculated.

18 In determining the amount assessed, the commissioner shall
19 consider all appropriations from the State Corporations Fund for
20 the support of this division and all reimbursements provided for
21 under this division.

22 (b) In no case shall the reimbursement, payment, or other fee
23 authorized by this section exceed the cost, including overhead,
24 reasonably incurred in the administration of this division, and the
25 maintenance of a prudent reserve not to exceed 90 days’ costs and
26 expenses.

27 (c) On or before the 30th day of September in each year, the
28 commissioner shall notify each licensee by mail of the amount
29 assessed and levied against it and that amount shall be paid within
30 20 days. If payment is not made within 20 days, the commissioner
31 shall assess and collect a penalty, in addition to the assessment of
32 1 percent of the assessment for each month or part of a month that
33 the payment is delayed or withheld.

34 (d) If a licensee fails to pay the assessment on or before the 30th
35 day following the day upon which payment is due, the
36 commissioner may by order summarily suspend or revoke the
37 license issued to the licensee. An order issued under this section
38 is not stayed by the filing of a request for a hearing. If, after an
39 order is made, the request for hearing is filed in writing within 15
40 days from the date of service of the order and a hearing is not held

1 within 60 days of the filing, the order is deemed rescinded as of
2 its effective date. During a period when its license is revoked or
3 suspended, a licensee shall not conduct business pursuant to this
4 division except as may be permitted by further order of the
5 commissioner. However, the revocation, suspension, or surrender
6 of a license shall not affect the powers of the commissioner as
7 provided in this division.

8 *SEC. 84. Section 50513 is added to the Financial Code, to*
9 *read:*

10 *50513. (a) The commissioner may do one or more of the*
11 *following:*

12 *(1) Deny, suspend, revoke, condition, or decline to renew a*
13 *mortgage loan originator license for a violation of this division,*
14 *or any rules or regulations adopted thereunder.*

15 *(2) Deny, suspend, revoke, condition, or decline to renew a*
16 *mortgage loan originator license if an applicant or licensee fails*
17 *at any time to meet the requirements of Section 50141 or 50144,*
18 *or withholds information or makes a material misstatement in an*
19 *application for a license or license renewal.*

20 *(3) Order restitution against a mortgage loan originator or any*
21 *residential mortgage lender or servicer licensee employing a*
22 *mortgage loan originator for a violation of this division.*

23 *(4) Impose fines on a mortgage loan originator or any*
24 *residential mortgage lender or servicer licensee employing a*
25 *mortgage loan originator pursuant to subdivisions (b), (c), and*
26 *(d).*

27 *(5) Issue orders or directives to mortgage loan originators under*
28 *this division as follows:*

29 *(A) Order or direct a mortgage loan originator or any*
30 *residential mortgage lender or servicer licensee employing a*
31 *mortgage loan originator to desist and refrain from conducting*
32 *business, including immediate temporary orders to desist and*
33 *refrain.*

34 *(B) Order or direct a mortgage loan originator or any*
35 *residential mortgage lender or servicer licensee employing a*
36 *mortgage loan originator to cease any harmful activities or*
37 *violations of this division, including immediate temporary orders*
38 *to desist and refrain.*

39 *(C) Enter immediate temporary orders to cease business under*
40 *a license issued pursuant to the authority granted under Section*

1 50002 if the commissioner determines that the license was
2 erroneously granted or the mortgage loan originator is currently
3 in violation of this division.

4 (D) Order or direct any other affirmative action as the
5 commissioner deems necessary.

6 (b) The commissioner may impose a civil penalty on a mortgage
7 loan originator or any residential mortgage lender or servicer
8 licensee employing a mortgage loan originator, if the commissioner
9 finds, on the record after notice and opportunity for hearing, that
10 the mortgage loan originator or any residential mortgage lender
11 or servicer licensee employing a mortgage loan originator has
12 violated or failed to comply with any requirement of this division
13 or any regulation prescribed by the commissioner under this
14 division or order issued under authority of this division.

15 (c) The maximum amount of penalty for each act or omission
16 described in subdivision (b) shall be twenty-five thousand dollars
17 (\$25,000).

18 (d) Each violation or failure to comply with any directive or
19 order of the commissioner is a separate and distinct violation or
20 failure.

21 SEC. 85. Section 50601 of the Financial Code is repealed.

22 ~~50601. This division shall become operative on January 1,~~
23 ~~1996.~~

24 SEC. 86. Section 50602 of the Financial Code is repealed.

25 ~~50602. This division is repealed on January 1, 1996, unless the~~
26 ~~following two conditions are met. First, the Commissioner of~~
27 ~~Corporations must receive, on or before March 1, 1995, from no~~
28 ~~fewer than 150 persons, a notice of intention to file an application~~
29 ~~for licensure as a residential mortgage lender or residential~~
30 ~~mortgage loan servicer, accompanied by the application filing fee~~
31 ~~and an annual financial report for calendar year 1994 that meets~~
32 ~~the requirements of subdivision (a) of Section 50401. Second, the~~
33 ~~Legislature shall appropriate money for the implementation of this~~
34 ~~division to the Department of Corporations from Item~~
35 ~~2180-001-067 of the 1995-96 Budget Act. If the above two~~
36 ~~conditions are not met, all persons who have paid fees or~~
37 ~~assessments under this division shall receive a refund prior to the~~
38 ~~date of repeal.~~

39 SEC. 87. Section 50700 of the Financial Code is amended to
40 read:

1 50700. (a) A residential mortgage lender, or a person or
 2 employee acting under the authority of a residential mortgage
 3 lender's license, *including a mortgage loan originator*, shall not
 4 provide brokerage services to a borrower, except as provided in
 5 subdivision (c).

6 (b) "Brokerage services" means either of the following:

7 (1) Obtaining or attempting to obtain, on behalf of a borrower,
 8 a residential mortgage loan, as defined in subdivision ~~(p)~~ of
 9 Section 50003, secured by residential real estate, as defined in
 10 subdivision ~~(w)~~ of Section 50003, made with the funds of
 11 another institutional lender, as defined in paragraphs (1), (2), and
 12 (4) of subdivision ~~(k)~~ of Section 50003, and closed in the name
 13 of that lender, for a fee paid by the borrower or the institutional
 14 lender.

15 (2) Obtaining or attempting to obtain, on behalf of a borrower,
 16 a residential mortgage loan, as defined in subdivision ~~(p)~~ of
 17 Section 50003, secured by residential real estate, as defined in
 18 subdivision ~~(w)~~ of Section 50003, made with the funds of
 19 another institutional lender, as defined in paragraphs (1), (2), and
 20 (4) of subdivision ~~(k)~~ of Section 50003, but closed in the name
 21 of the licensee, for a fee paid by the borrower or the institutional
 22 lender.

23 (c) A residential mortgage lender *or a mortgage loan originator*
 24 *employed by a residential mortgage lender* may provide brokerage
 25 services under the authority of ~~its~~ *the lender's* license, if the lender
 26 first enters into a written brokerage agreement with the borrower
 27 that satisfies the requirements of Section 50701.

28 (d) This chapter does not authorize a *residential mortgage lender*
 29 licensee to do any of the following:

30 (1) Provide brokerage services through independent contractors.

31 (2) *Provide brokerage services through an employee not licensed*
 32 *as a mortgage loan originator.*

33 ~~(2)~~

34 (3) Obtain or attempt to obtain for a borrower a residential
 35 mortgage loan that is a "high cost mortgage," referred to in Section
 36 152(aa)(1) of the *federal* Home Ownership and Equity Protection
 37 Act of 1994, as amended (15 U.S.C. Sec. 1602 (aa)).

38 ~~(3)~~

39 (4) Hold itself out to borrowers, through advertising, as a
 40 mortgage broker, rather than a residential mortgage lender.

1 However, a licensee shall disclose its status as a broker or agent
2 when that disclosure is required by law.

3 ~~(4)~~

4 (5) Perform activity subject to Section 10131 of the Business
5 and Professions Code, except activities authorized by this division.

6 (e) *A mortgage loan originator may only provide brokerage*
7 *services as an employee of a licensed residential mortgage lender.*

8 SEC. 88. *Section 50701 of the Financial Code is amended to*
9 *read:*

10 50701. (a) As soon as practical after a borrower requests that
11 the *residential mortgage lender* licensee arrange a loan to be made
12 by another institutional lender, and before the licensee performs
13 brokerage services for the borrower, the licensee and borrower
14 shall enter into a written loan brokerage agreement that satisfies
15 the requirements of this section.

16 (b) Both the licensee's authorized representative, *who shall be*
17 *a licensed mortgage loan originator*, and the borrower shall sign
18 and date the loan brokerage agreement, and the licensee shall
19 deliver a copy of the fully executed loan brokerage agreement to
20 the borrower either upon execution, if the documents are signed
21 in the licensee's office, or within three business days after
22 execution.

23 (c) *The loan brokerage agreement shall include the mortgage*
24 *loan originator's unique identifier.*

25 ~~(e)~~

26 (d) The loan brokerage agreement shall contain an explicit
27 statement that (1) the licensee is acting as the agent of the borrower
28 in providing brokerage services to the borrower, and (2) when
29 acting as agent for the borrower, it owes to that borrower a
30 fiduciary duty of utmost care, honesty, and loyalty in the
31 transaction, including the duty of full disclosure of all material
32 facts. If the licensee is authorized to act as an agent for any other
33 person, the brokerage agreement shall contain a statement of that
34 fact and identification of that person.

35 ~~(d)~~

36 (e) The loan brokerage agreement shall contain a detailed
37 description of the services the licensee agrees to perform for the
38 borrower, and a good faith estimate of any fees the licensee will
39 receive for those services, whether paid by the borrower, the
40 institutional lender, or both.

1 ~~(e)~~

2 (f) The loan brokerage agreement shall carry a clear and
3 conspicuous statement of the conditions under which the borrower
4 is obligated to pay the licensee for brokerage services rendered
5 under the agreement.

6 ~~(f)~~

7 (g) The loan brokerage agreement shall provide that, if the
8 licensee makes a materially false or misleading statement or
9 omission in the inducement or implementation of the agreement,
10 the borrower may, in addition to any other legal rights or remedies,
11 upon written notice, do any of the following:

12 (1) Rescind the brokerage agreement.

13 (2) Recover fees paid by the borrower to the licensee for
14 brokerage services rendered by the licensee pursuant to the
15 agreement.

16 (3) Recover actual costs, including attorney’s fees, for enforcing
17 the borrower’s rights under the loan brokerage agreement.

18 ~~(g)~~

19 (h) If the loan brokerage agreement fails to set forth the rights
20 in subdivision~~(f)~~ (g), these rights shall be implied by operation of
21 law.

22 ~~(h)~~

23 (i) The loan brokerage agreement shall be the only agreement
24 between the borrower and the licensee with respect to a single
25 loan.

26 ~~(i)~~

27 (j) A licensee whose services to a borrower are limited to
28 providing brokerage services may not require a borrower to pay
29 fees or charges before the residential mortgage loan closing, other
30 than either of the following:

31 (1) Actual charges to be incurred by the licensee on behalf of
32 the borrower for services from third parties necessary to process
33 the application, such as credit reports, appraisals, inspections, flood
34 certification, and tax service, and, in transactions where those
35 services are provided by the licensee, a charge not to exceed the
36 fee customarily charged for the same or comparable service in the
37 community in which the service was rendered.

38 (2) An application fee.

1 A licensee may not accept a fee under Section 50203(a)(1) or
2 (2) and subsequently require a borrower to pay additional fees or
3 charges under this paragraph for the borrower's loan transaction.

4 (j)

5 (k) Any loan brokerage agreement that provides for the
6 collection of an application fee shall be approved as to form by
7 the commissioner before its use by a licensee, if the agreement
8 meets the following requirements:

9 (1) The agreement specifies the services to be rendered for the
10 application fee.

11 (2) The agreement sets forth the amount of the application fee
12 and the date the fee becomes due and payable.

13 (3) The agreement does not contain a provision that purports to
14 except or relieve the licensee from the responsibility to fulfill
15 verbal commitments and representations made by employees or
16 agents of the licensee when contracting for the application fee, or
17 guarantee that a loan will be obtained.

18 (4) The agreement sets forth a definite date for full performance
19 of the services promised in exchange for the application fee.

20 *SEC. 89. Section 50705 of the Financial Code is repealed.*

21 ~~50705. Prior to providing brokerage services for a borrower
22 under this chapter, and thereafter once every four years, every
23 residential mortgage lender employee who provides brokerage
24 services shall complete educational courses equivalent to those
25 described in paragraphs (1) and (2) of subdivision (a) of Section
26 10170.5 of the Business and Professions Code. This section does
27 not impose an additional requirement upon an employee who holds
28 a valid real estate license.~~

29 *SEC. 90. Section 18034 is added to the Health and Safety Code,
30 to read:*

31 18034. (a) A dealer, as defined in Section 18002.6, or a
32 salesperson, as defined in Section 18013, is not required to be
33 licensed as a mortgage loan originator under the provisions of state
34 law that implement the federal Secure and Fair Enforcement for
35 Mortgage Licensing Act of 2008 (Public Law 110-289), if the
36 dealer or salesperson performs only administrative or clerical tasks
37 on behalf of a person meeting the definition of a mortgage loan
38 originator, and if the dealer or salesperson does not accept
39 compensation from a lender, mortgage loan originator, or from
40 any agent of any lender or mortgage loan originator.

1 (b) For purposes of this section, the term “administrative and
2 clerical tasks” means the receipt, collection, and distribution of
3 information common for the processing or underwriting of a loan
4 in the mortgage industry and communication with a consumer to
5 obtain information necessary for the processing or underwriting
6 of a residential mortgage loan.

7 *SEC. 91. The Legislature finds and declares that Sections 6,
8 20, and 65 of this act imposes a limitation on the public’s right of
9 access to the meetings of public bodies or the writings of public
10 officials and agencies within the meaning of Section 3 of Article
11 I of the California Constitution. Pursuant to that constitutional
12 provision, the Legislature makes the following findings to
13 demonstrate the interest protected by this limitation and the need
14 for protecting that interest:*

15 *In order to allow the Department of Real Estate and the
16 Department of Corporations to fully accomplish their goals, it is
17 imperative to protect the interests of those persons submitting
18 information to the departments to ensure that any personal or
19 sensitive business information that this act requires those persons
20 to submit is protected as confidential information.*

21 *SEC. 92. Every person who is required to hold a mortgage
22 loan originator license under the California Finance Lenders Law
23 or the California Residential Mortgage Lending Act shall obtain
24 that license by July 31, 2010. Every person who is required to hold
25 a mortgage loan originator license endorsement under the Real
26 Estate Law shall obtain that license endorsement by December
27 31, 2010. No person required to hold a mortgage loan originator
28 license under the California Finance Lenders Law or the California
29 Residential Mortgage Lending Act shall be required to obtain that
30 license before July 1, 2010. No person required to hold a mortgage
31 loan originator license endorsement under the Real Estate Law
32 shall be required to obtain that license endorsement before
33 December 1, 2010.*

34 *SEC. 93. The provisions of this act are severable. If any
35 provision of this act or its application is held invalid, that invalidity
36 shall not affect other provisions or applications that can be given
37 effect without the invalid provision or application.*

38 *SEC. 94. No reimbursement is required by this act pursuant
39 to Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school*

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 *SEC. 95. This act is an urgency statute necessary for the*
8 *immediate preservation of the public peace, health, or safety within*
9 *the meaning of Article IV of the Constitution and shall go into*
10 *immediate effect. The facts constituting the necessity are:*

11 *In order to implement protections for the public relative to*
12 *mortgage loan originators at the earliest possible time, it is*
13 *necessary that this act take effect immediately.*

14
15
16
17
18
19

**All matter omitted in this version of the bill
appears in the bill as amended in Assembly,
June 1, 2009 (JR11)**