

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

December 18, 2008

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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 2 of Division 4 of, and to repeal Section 10131.8 of, the Business and Professions Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 36, as introduced, Calderon. Real estate licenses: mortgages.

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.

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. 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 10131.8 of the Business and Professions
- 2 Code is repealed.
- 3 ~~10131.8. (a) A real estate broker who acts pursuant to~~
- 4 ~~subdivision (d) of Section 10131 and who meets all of the~~
- 5 ~~following requirements shall notify the department annually in~~
- 6 ~~writing on a form that is acceptable to the commissioner:~~
- 7 ~~(1) The real estate broker is an approved lender for the Federal~~
- 8 ~~Housing Administration, Veterans Administration, Farmers Home~~
- 9 ~~Administration, Government National Mortgage Association,~~
- 10 ~~Federal National Mortgage Administration, or the Federal Home~~
- 11 ~~Loan Mortgage Corporation.~~
- 12 ~~(2) The real estate broker makes residential mortgage loans to~~
- 13 ~~a loan applicant for a residential mortgage loan by using or~~
- 14 ~~advancing the broker's own funds, or by making a commitment~~
- 15 ~~to advance the broker's own funds.~~

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

3 ~~(4) The real estate broker at all times maintains a tangible net~~  
4 ~~worth, computed in accordance with generally accepted accounting~~  
5 ~~standards, of a minimum of two hundred fifty thousand dollars~~  
6 ~~(\$250,000).~~

7 ~~(b) As used in paragraph (2) of subdivision (a), “own funds”~~  
8 ~~means (1) cash, corporate capital, or warehouse credit lines at~~  
9 ~~commercial banks, savings banks, savings and loan associations,~~  
10 ~~industrial loan companies, or other sources that are liability items~~  
11 ~~on the real estate broker’s financial statements, whether secured~~  
12 ~~or unsecured, or (2) cash, corporate capital, or warehouse credit~~  
13 ~~lines at commercial banks, savings banks, savings and loan~~  
14 ~~associations, industrial loan companies, or other sources that are~~  
15 ~~liability items on the financial statements of an affiliate of the real~~  
16 ~~estate broker, whether secured or unsecured. “Own funds” does~~  
17 ~~not include funds provided by a third party to fund a loan on~~  
18 ~~condition that the third party will subsequently purchase or accept~~  
19 ~~an assignment of the loan.~~

20 SEC. 2. Section 10140.6 of the Business and Professions Code  
21 is amended to read:

22 10140.6. (a) A real estate licensee shall not publish, circulate,  
23 distribute, ~~nor~~ or cause to be published, circulated, or distributed  
24 in any newspaper or periodical, or by mail, any matter pertaining  
25 to any activity for which a real estate license is required ~~which~~  
26 *that* does not contain a designation disclosing that he *or she* is  
27 performing acts for which a real estate license is required.

28 (b) (1) *A real estate licensee shall disclose his or her license*  
29 *identification number and, if that licensee is a mortgage loan*  
30 *originator, the unique identifier assigned to that licensee by the*  
31 *Nationwide Mortgage Licensing System and Registry, on all*  
32 *solicitation materials intended to be the first point of contact with*  
33 *consumers and on real property purchase agreements when acting*  
34 *as an agent in those transactions. The commissioner may adopt*  
35 *regulations identifying the materials in which a licensee must*  
36 *disclose a license identification number and, if that licensee is a*  
37 *mortgage loan originator, the unique identifier assigned to that*  
38 *licensee by the Nationwide Mortgage Licensing System and*  
39 *Registry.*

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

7 (3) *Nothing in this section shall be construed to limit or change*  
8 *the requirement described in Section 10236.4 as applicable to real*  
9 *estate brokers.*

10 ~~The~~

11 (c) *The provisions of this section shall not apply to classified*  
12 *rental advertisements reciting the telephone number at the premises*  
13 *of the property offered for rent or the address of the property*  
14 *offered for rent.*

15 (d) *“Mortgage loan originator,” “unique identifier,” and*  
16 *“Nationwide Mortgage Licensing System and Registry” have the*  
17 *meanings set forth in Section 10166.01.*

18 SEC. 3. Section 10150 of the Business and Professions Code  
19 is amended to read:

20 10150. (a) Application for the real estate broker license  
21 examination shall be made in writing to the commissioner. The  
22 commissioner may prescribe the format and content of the broker  
23 examination application. The application for the broker  
24 examination shall be accompanied by the real estate broker license  
25 examination fee.

26 (b) Persons who have been notified by the commissioner that  
27 they passed the real estate broker license examination may apply  
28 for a real estate broker license. A person applying for the broker  
29 examination may also apply for a real estate broker license.  
30 However, a license shall not be issued until the applicant passes  
31 the real estate broker license examination. If there is any change  
32 to the information contained in a real estate broker license  
33 application after the application has been submitted and before the  
34 license has been issued, the commissioner may require the applicant  
35 to submit a supplement to the application listing the changed  
36 information.

37 (c) Application for the real estate broker license shall be made  
38 in writing to the commissioner. The commissioner may prescribe  
39 the format and content of the broker license application. The

1 application for the real estate broker license shall be accompanied  
2 by the appropriate fee.

3 *(d) Application for an endorsement to act as a mortgage loan*  
4 *originator, as defined in Section 10166.01, shall be made either*  
5 *electronically or in writing to the commissioner. The commissioner*  
6 *may prescribe the format and content of the mortgage loan*  
7 *originator endorsement application, which shall meet the minimum*  
8 *requirements for licensing of a mortgage loan originator, pursuant*  
9 *to the Secure and Fair Enforcement for Mortgage Licensing Act*  
10 *of 2008 (Public Law 110-289).*

11 SEC. 4. Article 2.1 (commencing with Section 10166.01) is  
12 added to Chapter 2 of Division 4 of the Business and Professions  
13 Code, to read:

14  
15 Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

16  
17 10166.01. For purposes of this article, the following definitions  
18 shall apply:

19 (a) “SAFE Act” means the Secure and Fair Enforcement for  
20 Mortgage Licensing Act of 2008 (Public Law 110-289).

21 (b) (1) “Mortgage loan originator” means an individual who  
22 takes a residential mortgage loan application and offers or  
23 negotiates terms of a residential mortgage loan for compensation  
24 or gain. An individual real estate licensee acting within the meaning  
25 of paragraph (d) of Section 10131 is a mortgage loan originator  
26 for purposes of this article with respect to activities involving  
27 residential mortgage loans.

28 (2) Mortgage loan originator does not include any of the  
29 following:

30 (A) An individual who performs purely administrative or clerical  
31 tasks on behalf of a person meeting the definition of a mortgage  
32 loan originator. The term “administrative or clerical tasks” means  
33 the receipt, collection, and distribution of information common  
34 for the processing or underwriting of a loan in the mortgage  
35 industry and communication with a consumer to obtain information  
36 necessary for the processing or underwriting of a residential  
37 mortgage loan.

38 (B) An individual that is not compensated by a lender, other  
39 mortgage loan originator, or by any agent of any lender or other  
40 mortgage loan originator.

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

4 (D) An individual licensed or registered as a mortgage loan  
5 originator pursuant to the provisions of the Financial Code and the  
6 SAFE Act.

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

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

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

24 10166.02. (a) A real estate broker who acts pursuant to Section  
25 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,  
26 arranges, or services loans secured by real property containing one  
27 to four residential units, shall notify the department within 30 days  
28 of the effective date of this section or upon commencing that  
29 activity, whichever is later. The notification shall be made in  
30 writing on a form that is acceptable to the commissioner.

31 (b) No individual may engage in business as a mortgage loan  
32 originator under this article without first doing both of the  
33 following:

34 (1) Obtaining and maintaining a real estate license pursuant to  
35 Article 2 (commencing with Section 10150).

36 (2) Obtaining and maintaining a real estate license endorsement  
37 identifying that individual as a licensed mortgage loan originator.

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

1 (d) Applicants for a mortgage loan originator license  
2 endorsement shall apply in a form prescribed by the commissioner.  
3 Each form shall contain content as set forth by rule, regulation,  
4 instruction, or procedure of the commissioner.

5 (e) In order to fulfill the purposes of this article, the  
6 commissioner may establish relationships or contracts with the  
7 Nationwide Mortgage Licensing System and Registry or other  
8 entities designated by the Nationwide Mortgage Licensing System  
9 and Registry to collect and maintain records and process transaction  
10 fees or other fees related to licensees or other persons subject to  
11 this article.

12 (f) A real estate broker who fails to notify the department  
13 pursuant to subdivision (a), or who fails to obtain a license  
14 endorsement required pursuant to subdivision (b), shall be assessed  
15 a penalty of fifty dollars (\$50) per day for each day written  
16 notification has not been received or a license endorsement has  
17 not been obtained, up to and including the 30th day after the first  
18 day of the assessment penalty. On and after the 31st day, the  
19 penalty is one hundred dollars (\$100) per day, not to exceed a total  
20 penalty of ten thousand dollars (\$10,000), regardless of the number  
21 of days, until the department receives the written notification or  
22 the licensee obtains the license endorsement. Penalties for  
23 violations of subdivisions (a) and (b) shall be additive.

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

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

33 10166.03. (a) In connection with an application to the  
34 commissioner for a license endorsement as a mortgage loan  
35 originator, every applicant shall furnish to the Nationwide  
36 Mortgage Licensing System and Registry information concerning  
37 the applicant's identity, including the following:

38 (1) Fingerprints or fingerprint images, for purposes of  
39 performing a state and federal criminal history background check.

- 1 (2) Personal history and experience in a form prescribed by the  
2 Nationwide Mortgage Licensing System and Registry, including  
3 the submission of authorization for the Nationwide Mortgage  
4 Licensing System and Registry and the commissioner to obtain  
5 both of the following:
- 6 (A) An independent credit report from a consumer reporting  
7 agency.
- 8 (B) Information related to any administrative, civil, or criminal  
9 findings by any governmental jurisdiction.
- 10 (b) The requirements of subdivision (a) are satisfied if the  
11 applicant has previously complied with Section 10152 to the  
12 satisfaction of the commissioner.
- 13 (c) The commissioner shall request subsequent arrest notification  
14 service from the Department of Justice, as provided pursuant to  
15 Section 11105.2 of the Penal Code, in connection with an applicant  
16 for a license endorsement as a mortgage loan originator.
- 17 10166.04. Notwithstanding any other provision of law, the  
18 commissioner shall not issue a license endorsement to act as a  
19 mortgage loan originator to an applicant unless the commissioner  
20 makes all of the following findings:
- 21 (a) The applicant has never had a mortgage loan originator  
22 license revoked in any other governmental jurisdiction.
- 23 (b) The applicant has not been convicted of, or pled guilty or  
24 nolo contendere to, a felony in a domestic, foreign, or military  
25 court, under either of the following conditions, however, any  
26 conviction expunged from the applicant's record shall not be  
27 considered a conviction for purposes of this subdivision:
- 28 (1) During the seven year period preceding the date of the  
29 application for licensing.
- 30 (2) At any time preceding the date of application, if the felony  
31 involved an act of fraud, dishonesty, a breach of trust, or money  
32 laundering.
- 33 (c) The applicant has demonstrated financial responsibility,  
34 character, and general fitness such as to command the confidence  
35 of the community and warrant a determination that the mortgage  
36 loan originator will operate honestly, fairly, and efficiently within  
37 the purposes of the article.
- 38 (d) The applicant has complied with the education and written  
39 testing requirements in Section 10166.05.

1 10166.05. (a) In addition to the requirements of Section 10153,  
2 an applicant for a license endorsement as a mortgage loan  
3 originator shall complete at least 20 hours of education courses,  
4 which shall include at least the following:

- 5 (1) Three hours of federal law and regulations.
- 6 (2) Three hours of ethics, which shall include instruction on  
7 fraud, consumer protection, and fair lending issues.
- 8 (3) Two hours of training related to lending standards for the  
9 nontraditional mortgage product marketplace.

10 (b) For purposes of this section, education courses are only  
11 acceptable if they have been reviewed and approved, or otherwise  
12 deemed acceptable, by the Nationwide Mortgage Licensing System  
13 and Registry, in accordance with the SAFE Act, and by the  
14 commissioner. Education may be offered in a classroom, online,  
15 or by any other means approved by the Nationwide Mortgage  
16 Licensing System and Registry, in accordance with the SAFE Act,  
17 and by the commissioner. The commissioner may substitute any  
18 of the courses described in subdivision (a) for the course  
19 requirements of Section 10153.2, 10153.3, 10153.4, or 10153.5,  
20 subject to a finding that the course requirements in subdivision (a)  
21 are substantially equivalent to, and meet the intent of, Section  
22 10153.2, 10153.3, 10153.4, or 10153.5, as applicable.

23 (c) Before being issued a license endorsement to act as a  
24 mortgage loan originator, an individual shall pass a qualified  
25 written test developed or otherwise deemed acceptable by the  
26 Nationwide Mortgage Licensing System and Registry and  
27 administered by a test provider approved or otherwise deemed  
28 acceptable by the Nationwide Mortgage Licensing System and  
29 Registry.

30 (d) A written test shall not be treated as a qualified written test  
31 for purposes of this section, unless the test adequately measures  
32 the applicant's knowledge and comprehension in the following  
33 subject areas: ethics, federal law and regulation pertaining to  
34 mortgage origination, state law and regulation pertaining to  
35 mortgage origination, and federal and state law and regulation  
36 relating to fraud, consumer protection, the nontraditional mortgage  
37 marketplace, and fair lending issues.

38 (e) Nothing in this section shall prohibit a test provider approved  
39 by the Nationwide Mortgage Licensing System and Registry from  
40 providing a test at the location of the employer of the applicant or

1 any subsidiary or affiliate of the employer of the applicant, or any  
2 entity with which the applicant holds an exclusive arrangement to  
3 conduct the business of a mortgage loan originator.

4 (f) An individual shall not be considered to have passed a  
5 qualified written test administered pursuant to this section unless  
6 the individual achieves a test score of not less than 75 percent  
7 correct answers to questions.

8 (g) An individual who fails the qualified written test may retake  
9 the test up to three consecutive times, although at least 30 days  
10 must pass between each retesting.

11 (h) An applicant who fails three consecutive retests must wait  
12 at least six months before retesting.

13 (i) A mortgage loan originator who fails to maintain a valid  
14 license endorsement for a period of five years or longer or who  
15 fails to register as a mortgage loan originator in accordance with  
16 applicable California law shall retake the qualified written test.

17 10166.06. (a) A real estate broker who acts pursuant to Section  
18 10131.1 or subdivision (d) or (e) of Section 10131, and who makes,  
19 arranges, or services one or more loans in a calendar year that are  
20 secured by real property containing one to four residential units,  
21 shall annually file a business activities report, within 90 days after  
22 the end of the broker's fiscal year or within any additional time as  
23 the commissioner may allow for filing for good cause. The report  
24 shall contain within its scope all of the following information for  
25 the fiscal year, relative to the business activities of the broker and  
26 those of any other brokers and real estate salespersons acting under  
27 that broker's supervision:

28 (1) Name and license number of the supervising broker and  
29 names and license numbers of the real estate brokers and  
30 salespersons under that broker's supervision. The report shall  
31 include brokers and salespersons who were under the supervising  
32 broker's supervision for all or part of the year.

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

37 (A) Activities relating to mortgages, including arranging,  
38 making, or servicing.

39 (B) Other activities performed under the real estate broker's or  
40 salesperson's license.

1 (C) Activities performed under related licenses, including, but  
2 not limited to, a license to engage as a finance lender or a finance  
3 broker under the California Finance Lenders Law (Division 9  
4 (commencing with Section 22000) of the Financial Code), or a  
5 license to engage as a residential mortgage lender or residential  
6 mortgage loan servicer under the California Residential Mortgage  
7 Lending Act (Division 20 (commencing with Section 50000) of  
8 the Financial Code).

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

12 (4) For fixed rate loans made, brokered, or serviced, all of the  
13 following:

14 (A) The total number, aggregate principal amount, lowest  
15 interest rate, highest interest rate, and a list of the institutional  
16 lenders of record. If the loan was funded by any lender other than  
17 an institutional lender, the broker shall categorize the loan as  
18 privately funded.

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

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

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

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

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

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

36 (6) For all loans made, brokered, or serviced, the total number  
37 and aggregate principal amount of loans funded by institutional  
38 lenders, and the total number and aggregate principal amount of  
39 loans funded by private lenders.

1 (7) For all loans made, brokered, or serviced, the total number  
2 and aggregate principal amount of loans that included a prepayment  
3 penalty, the minimum prepayment penalty length, the maximum  
4 prepayment penalty length, and the number of loans with  
5 prepayment penalties whose length exceeded the length of time  
6 before the borrower's loan payment amount could increase.

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

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

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

18 (11) For purposes of this section, an institutional lender has the  
19 meaning specified in paragraph (1) of subdivision (c) of Section  
20 10232.

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

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

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

4 10166.07. Each mortgage loan originator shall submit reports  
5 of condition to the Nationwide Mortgage Licensing System and  
6 Registry reports of condition, and those reports shall be in the form  
7 and shall contain information as the Nationwide Mortgage  
8 Licensing System and Registry may require.

9 10166.08. The minimum standards for renewal of an  
10 endorsement as a mortgage loan originator shall include the  
11 following:

12 (a) The mortgage loan originator continues to meet the minimum  
13 standards for obtaining an endorsement as a mortgage loan  
14 originator.

15 (b) The mortgage loan originator satisfies the annual continuing  
16 education requirements described in Section 10166.09.

17 10166.09. (a) A mortgage loan originator shall complete at  
18 least eight hours of continuing education annually, which shall  
19 include at least three hours relating to federal law and regulations,  
20 two hours of ethics, which shall include instruction on fraud,  
21 consumer protection, and fair lending issues, and two hours related  
22 to lending standards for the nontraditional mortgage product  
23 marketplace.

24 (b) For purposes of subdivision (a), continuing education courses  
25 and course providers shall be reviewed and approved by the  
26 commissioner and the Nationwide Mortgage Licensing System  
27 and Registry.

28 (c) The commissioner shall have the authority to substitute any  
29 of the courses described in subdivision (a) for the course  
30 requirements of Section 10170.5, subject to a finding that the  
31 course requirements in subdivision (a) are substantially equivalent  
32 to, and meet the intent of, Section 10170.5.

33 (d) Nothing in this section shall preclude any education course,  
34 as approved by the commissioner and the Nationwide Mortgage  
35 Licensing System and Registry, that is provided by the employer  
36 of the mortgage loan originator or an entity that is affiliated with  
37 the mortgage loan originator by an agency contract, or any  
38 subsidiary or affiliate of the employer or entity.

1 (e) Continuing education may be offered either in a classroom,  
2 online, or by any other means approved by the commissioner and  
3 the Nationwide Mortgage Licensing System and Registry.

4 (f) A mortgage loan originator may only receive credit for a  
5 continuing education course in the year in which the course is  
6 taken.

7 (g) A mortgage loan originator may not take the same approved  
8 course in the same or successive years to meet the requirements  
9 of this section for continuing education.

10 (h) A mortgage loan originator who is an instructor of an  
11 approved continuing education course may receive credit for his  
12 or her own annual continuing education requirement at the rate of  
13 two hours credit for every one hour taught.

14 (i) A person who successfully completes the education  
15 requirements approved by the Nationwide Mortgage Licensing  
16 System and Registry in any state other than California shall be  
17 granted credit by the commissioner towards completion of  
18 continuing education requirements in this state.

19 10166.10. (a) A real estate broker who acts pursuant to Section  
20 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,  
21 arranges, or services loans secured by real property containing one  
22 to four residential units, shall keep documents and records that  
23 will properly enable the commissioner to determine whether the  
24 residential mortgage brokerage, servicing, and lending functions  
25 performed by the broker comply with this division and with all  
26 applicable rules and orders made by the commissioner. These  
27 documents shall include, at a minimum, the documents described  
28 in Section 10148. Upon request of the commissioner, a real estate  
29 broker shall file an authorization for disclosure to the commissioner  
30 of financial records of his or her licensed business pursuant to  
31 Section 7473 of the Government Code.

32 (b) Notwithstanding subdivision (a) of Section 10148, the  
33 business documents and records of real estate brokers described  
34 in subdivision (a) and real estate salespersons acting under those  
35 brokers are subject to inspection and examination or audit by the  
36 commissioner, at his or her discretion, after reasonable notice.  
37 That real estate broker or salesperson shall, upon request by the  
38 commissioner and within the time period specified in that request,  
39 allow the commissioner, or his or her authorized representative,  
40 to inspect and copy any business documents and records. The

1 commissioner may suspend or revoke the license of the broker or  
2 salesperson if he or she fails to produce documents or records  
3 within the time specified in the request.

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

11 10166.11. (a) As often as the commissioner deems necessary  
12 and appropriate, the commissioner shall examine the affairs of  
13 each real estate broker who is required to notify the commissioner  
14 or obtain a license endorsement pursuant to Section 10166.02 for  
15 compliance with this part. These examinations shall also include  
16 a review of the affairs of all real estate brokers and real estate  
17 salespersons acting under the supervision of each real estate broker  
18 who is required to file reports with the department pursuant to  
19 Section 10166.06. The commissioner shall appoint suitable persons  
20 to perform these examinations. The commissioner and his or her  
21 appointees may examine the books, records, and documents of the  
22 licensee, and may examine the licensee's officers, directors,  
23 employees, or agents under oath regarding the licensee's  
24 operations. The commissioner may cooperate with any agency of  
25 the state or federal government, other states, agencies, the Federal  
26 National Mortgage Association, or the Federal Home Loan  
27 Mortgage Corporation. The commissioner may accept an  
28 examination conducted by one of these entities in place of an  
29 examination by the commissioner under this section, unless the  
30 commissioner determines that the examination does not provide  
31 information necessary to enable the commissioner to fulfill his or  
32 her responsibilities under this division.

33 (b) The commissioner may impose a penalty against a real estate  
34 broker or real estate salesperson whose affairs are examined or  
35 reviewed pursuant to subdivision (a) based on the findings of the  
36 examination or review. The commissioner may suspend or revoke  
37 the license or license endorsement of a real estate broker or real  
38 estate salesperson who fails to pay that penalty. In addition, the  
39 commissioner may bring an action in an appropriate court of this  
40 state to collect payment of the penalty.

1 (c) Penalties collected pursuant to subdivision (b) shall be  
2 deposited into the Recovery Account of the Real Estate Fund and  
3 shall, upon appropriation by the Legislature, be available for  
4 expenditure for the purposes specified in Chapter 6.5 (commencing  
5 with Section 10470).

6 (d) The statement of the findings of an examination conducted  
7 pursuant to this section shall belong to the commissioner and shall  
8 not be disclosed to anyone other than the licensee, law enforcement  
9 officials, or other state or federal regulatory agencies for further  
10 investigation and enforcement. Reports required of licensees by  
11 the commissioner under this division and results of examinations  
12 performed by the commissioner under this division are the property  
13 of the commissioner.

14 10166.12. A real estate broker who acts pursuant to Section  
15 10131.1 or subdivision (d) or (e) of Section 10131 and who makes,  
16 arranges, or services loans secured by real property containing one  
17 to four residential units shall make any special reports to the  
18 commissioner that the commissioner may, from time to time,  
19 require.

20 10166.13. A real estate broker shall notify the department when  
21 he or she is no longer subject to this part. If a broker has already  
22 made reports required by Sections 10166.06 and 10166.07 within  
23 the year, he or she shall continue reports for that year, but shall  
24 notify the department prior to the expiration of that year that he  
25 or she will no longer be subject to this part in the succeeding year.

26 10166.14. (a) The commissioner shall regularly report  
27 violations of this article, as well as enforcement actions taken  
28 against any mortgage loan originator to whom an endorsement has  
29 been issued, and enforcement actions taken against any individual  
30 for failure to obtain an endorsement as a mortgage loan originator,  
31 to the Nationwide Mortgage Licensing System and Registry.

32 (b) The commissioner shall establish a process that may be used  
33 by mortgage loan originators to challenge information entered into  
34 the Nationwide Mortgage Licensing System and Registry by the  
35 commissioner.

36 (c) The commissioner is authorized to promulgate regulations  
37 specifying (1) the recordkeeping requirements that mortgage loan  
38 originators shall satisfy and (2) the penalties that shall apply to  
39 mortgage loan originators for violations of this article.

1 SEC. 5. Section 10235.5 of the Business and Professions Code  
2 is amended to read:

3 10235.5. (a) No real estate licensee *or mortgage loan*  
4 *originator* shall place an advertisement disseminated primarily in  
5 this state for a loan unless there is disclosed within the printed text  
6 of that advertisement, or the oral text in the case of a radio or  
7 television advertisement, the ~~license~~ *Department of Real Estate*  
8 *license number and the unique identifier assigned to that licensee*  
9 *by the Nationwide Mortgage Licensing System and Registry* under  
10 which the loan would be made or arranged.

11 (b) *“Mortgage loan originator,” “unique identifier,” and*  
12 *“Nationwide Mortgage Licensing System and Registry” have the*  
13 *meanings set forth in Section 10166.01.*

14 SEC. 6. Section 10236.4 of the Business and Professions Code  
15 is amended to read:

16 10236.4. (a) In compliance with Section 10235.5, every  
17 licensed real estate broker shall also display his or her license  
18 number on all advertisements where there is a solicitation for  
19 borrowers or potential investors. *Every mortgage loan originator,*  
20 *as defined in Section 10166.01, shall also display the unique*  
21 *identifier assigned to that individual by the Nationwide Mortgage*  
22 *Licensing System and Registry on all advertisements where there*  
23 *is a solicitation for borrowers.*

24 (b) The disclosures required by Sections 10232.4 and 10240  
25 shall include the licensee’s license number, *the mortgage*  
26 *originator’s unique identifier, if applicable,* and the department’s  
27 license information telephone number.

28 (c) ~~This section shall become operative July 1, 1998.~~ *“Mortgage*  
29 *loan originator,” “unique identifier,” and “Nationwide Mortgage*  
30 *Licensing System and Registry” have the meanings set forth in*  
31 *Section 10166.01.*

32 SEC. 7. The Legislature finds and declares that Section 4 of  
33 this act imposes a limitation on the public’s right of access to the  
34 meetings of public bodies or the writings of public officials and  
35 agencies within the meaning of Section 3 of Article I of the  
36 California Constitution. Pursuant to that constitutional provision,  
37 the Legislature makes the following findings to demonstrate the  
38 interest protected by this limitation and the need for protecting  
39 that interest:

1 In order to allow the Department of Real Estate to fully  
2 accomplish its goals, it is imperative to protect the interests of  
3 those persons submitting information to the department to ensure  
4 that any personal or sensitive business information that this act  
5 requires those persons to submit is protected as confidential  
6 information.

7 SEC. 8. The provisions of this act shall become operative when  
8 the Real Estate Commissioner issues a finding that the Nationwide  
9 Mortgage Licensing System and Registry is capable of two-way  
10 electronic communication with the enterprise information system  
11 maintained by the Department of Real Estate.

12 SEC. 9. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.