

ASSEMBLY BILL

No. 1341

Introduced by Assembly Member Brown

February 27, 2015

An act to amend Sections 12214, 12306, 17207, 17405.1, 22107, 22707, 23016, 23046, 50302, 50314, and 50401 of the Financial Code, relating to financial service providers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1341, as introduced, Brown. Department of Business Oversight: financial service providers: costs of licensing and regulations.

Existing law authorizes the Commissioner of Business Oversight to require certain financial service providers that are licensed and regulated by the Department of Business Oversight, including, among others, check sellers, proraters, escrow agents, finance lenders and brokers, residential mortgage lenders or servicers, and businesses making deferred deposit transactions, to pay their pro rata share of the costs and expenses of the department's licensing and regulating activities. A violation of the licensing laws applicable to these financial service providers is a crime.

This bill would revise these provisions to require a licensee under the supervision of the department to pay to the commissioner its pro rata share of all costs and expenses in an amount sufficient, in the commissioner's judgment, to meet the expenses of the department in administering the applicable licensing law for the next year that includes, but shall not be limited to, the cost of routine examinations and the provision of a reasonable reserve for contingencies, with a consideration of any deficit or less any surplus actually incurred in the prior fiscal year, as specified. The bill would make May 31 the uniform date for

the commissioner to notify these licensees of the amount assessed for the next year, and generally give 30 days to all of these licensees to pay the assessment. The bill would authorize the commissioner, whenever he or she found it is necessary or advisable, to conduct a nonroutine examination of, or to devote any extraordinary attention to, any licensee and charge and collect from that licensee the department’s expenses, including, but not limited to, hourly wages and travel costs, for doing so. The bill would authorize the commissioner to maintain an action for the recovery of these costs in any court of competent jurisdiction.

This bill would raise the minimum assessment for a licensee under the Check Sellers, Bill Payers and Proraters Law from \$150 to \$1,000, and the California Finance Lenders Law from \$250 to \$800. The bill would modify the minimum calculation of an assessment for a licensee under the Escrow Law based on \$5,000 per main office and \$3,500 per each branch location, and the California Residential Mortgage Lending Act, based on mortgages loan originated by the licensee.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 12214 of the Financial Code is amended
 2 to read:
 3 12214. (a) An applicant at the time of filing an application for
 4 a license under this division shall pay to the commissioner the sum
 5 of fifty dollars (\$50) as a fee for investigating the application and
 6 two hundred dollars (\$200) as an application fee. The investigation
 7 fee and application fee are not refundable if an application is denied
 8 or withdrawn.
 9 ~~(b) (1) Each licensee shall pay to the commissioner its pro rata~~
 10 ~~share of all costs and expenses, reasonably incurred in the~~
 11 ~~administration of this division as estimated by the commissioner~~
 12 ~~for the ensuing year and any deficit actually incurred or anticipated~~
 13 ~~in the administration of the programs in the year in which such~~
 14 ~~assessment is made. The pro rata share shall be the proportion~~
 15 ~~which a licensee’s gross income bears to the aggregate gross~~
 16 ~~income of all licensees as shown by the annual financial reports~~
 17 ~~to the commissioner. The pro rata share shall not include the costs~~
 18 ~~of any examinations provided for in Section 12306, unless they~~
 19 ~~cannot be collected from the licensee examined.~~

1 (b) (1) *Each licensee under the supervision of the department*
2 *shall pay to the commissioner its pro rata share of all costs and*
3 *expenses in an amount sufficient, in the commissioner's judgment,*
4 *to meet the expenses of the department in administering the law*
5 *for the next year that shall include, but not be limited to, the cost*
6 *of examination pursuant to Section 12306, and the provision of a*
7 *reasonable reserve for contingencies, with a consideration of any*
8 *deficit or less any surplus actually incurred in the prior fiscal year.*
9 *The pro rata share shall be determined by the proportion which*
10 *a licensee's gross income bears to the aggregate gross income of*
11 *all licensees, as shown by the annual financial reports to the*
12 *commissioner, for the costs and expenses remaining after the*
13 *amount assessed pursuant to paragraph (3).*

14 (2) On or before the ~~30th~~ 31st day of May in each year, the
15 commissioner shall notify each licensee ~~by mail~~ of the amount
16 assessed and levied against it and that amount shall be paid within
17 ~~20~~ 30 days thereafter. If payment is not made within ~~20~~ 30 days,
18 the commissioner ~~shall~~ may assess and collect a penalty in addition
19 to the assessment, of 1 percent of the assessment for each month
20 or part of a month that the payment is delayed or withheld.

21 (3) In the levying and collection of the assessment, a licensee
22 shall not be assessed for nor be permitted to pay less than ~~one~~
23 ~~hundred fifty dollars (\$150)~~ one thousand dollars (\$1,000) per
24 year.

25 (4) If a licensee fails to pay the assessment on or before the 30th
26 day of June following the day upon which payment is due, the
27 commissioner may by order summarily suspend or revoke the
28 certificate issued to such licensee. If, after such an order is made,
29 a request for hearing is filed in writing and a hearing is not held
30 within 60 days thereafter, the order is deemed rescinded as of its
31 effective date. During any period when its certificate is revoked
32 or suspended, a licensee shall not conduct business pursuant to
33 this division except as may be permitted by order of the
34 commissioner; provided, however, that the revocation, suspension
35 or surrender of a certificate shall not affect the powers of the
36 commissioner as provided in this division.

37 SEC. 2. Section 12306 of the Financial Code is amended to
38 read:

39 12306. (a) The cost of ~~every~~ a routine examination of a
40 licensee or other person subject to this division shall be paid to the

1 commissioner by the licensee or person examined, and the
 2 commissioner may maintain an action for the recovery of these
 3 costs in any court of competent jurisdiction. In determining the
 4 cost of an examination, the commissioner may use the estimated
 5 average hourly cost for all persons performing examinations of
 6 licensees or other persons subject to this division for the fiscal
 7 year. *included in the annual assessment pursuant to Section 12214.*
 8 *The cost of a routine examination shall be determined by the*
 9 *expenses deemed necessary by the department to carry out its*
 10 *duties, including, but not limited to, the estimated cost for all*
 11 *persons performing examinations for the fiscal year. For the*
 12 *purposes of this section only, no person other than a licensee shall*
 13 *be deemed to be a person subject to this division unless and until*
 14 *the person is determined to be a person subject to this division by*
 15 *an administrative hearing in accordance with Chapter 5*
 16 *(commencing with Section 11500) of Part 1 of Division 3 of Title*
 17 *2 of the Government Code or by a judicial hearing in any court of*
 18 *competent jurisdiction.*

19 *(b) Whenever in the judgment of the commissioner it is necessary*
 20 *or advisable to conduct a nonroutine examination of, or to devote*
 21 *any extraordinary attention to, any licensee, the commissioner*
 22 *may do so and charge and collect from that licensee an amount*
 23 *not exceeding the department's expenses, including, but not limited*
 24 *to, the average hourly cost of each examiner engaged in the*
 25 *examination and compensation of employees. The commissioner*
 26 *may maintain an action for the recovery of these costs in any court*
 27 *of competent jurisdiction.*

28 *(c) Whenever in the judgment of the commissioner it is necessary*
 29 *or expedient for any examiner engaged in any examination to*
 30 *travel within or outside this state, the commissioner may charge*
 31 *for the travel expenses of the examiner.*

32 SEC. 3. Section 17207 of the Financial Code is amended to
 33 read:

34 17207. The commissioner shall charge and collect the following
 35 fees and assessments:

36 (a) For filing an application for an escrow agent's license, six
 37 hundred twenty-five dollars (\$625) for the first office or location
 38 and four hundred twenty-five dollars (\$425) for each additional
 39 office or location.

1 (b) For filing an application for a duplicate of an escrow agent's
2 license lost, stolen, or destroyed, or for replacement, upon a
3 satisfactory showing of the loss, theft, destruction, or surrender of
4 certificate for replacement, two dollars (\$2).

5 (c) For investigation services in connection with each
6 application, one hundred dollars (\$100), and for investigation
7 services in connection with each additional office application, one
8 hundred dollars (\$100).

9 (d) For holding a hearing in connection with the application, as
10 set forth under Section 17209.2, the actual costs experienced in
11 each particular instance.

12 ~~(e) (1) Each escrow agent shall pay to the commissioner for~~
13 ~~the support of this division for the ensuing year an annual license~~
14 ~~fee not to exceed two thousand eight hundred dollars (\$2,800) for~~
15 ~~each office or location.~~

16 *(e) (1) Each licensee under this division shall pay to the*
17 *commissioner its pro rata share of all costs and expenses in an*
18 *amount sufficient, in the commissioner's judgment, to meet the*
19 *expenses of the department in administering the law for the next*
20 *year that shall include, but not be limited to, the cost of inspection*
21 *and examination pursuant to Section 17405.1, and the provision*
22 *of a reasonable reserve for contingencies, with a consideration of*
23 *any deficit or less any surplus actually incurred in the prior fiscal*
24 *year. The assessment shall be determined by a pro rata share of*
25 *the proportion which a licensee's gross income bears to the*
26 *aggregate gross income of all licensees, as shown by the annual*
27 *financial statements to the commissioner, for the costs and expenses*
28 *remaining after assessing up to five thousand dollars (\$5,000) per*
29 *main office and up to three thousand five hundred dollars (\$3,500)*
30 *for each branch location.*

31 (2) On or before May ~~30~~ 31 in each year, the commissioner
32 shall notify each escrow agent by mail of the amount of the annual
33 license fee levied against it, and that the payment of the invoice
34 is payable by the escrow agent within 30 days after receipt of
35 notification by the commissioner.

36 (3) If payment is not made within 30 days, the commissioner
37 may assess and collect a penalty, in addition to the annual license
38 fee, of 10 percent of the fee for each month or part of a month that
39 the payment is delayed or withheld.

1 (4) If an escrow agent fails to pay the amount due on or before
2 the June 30 following the day upon which payment is due, the
3 commissioner may by order summarily suspend or revoke the
4 certificate issued to the company.

5 (5) If, after an order is made pursuant to paragraph (4), a request
6 for a hearing is filed in writing and a hearing is not held within 60
7 days thereafter, the order is deemed rescinded as of its effective
8 date. During any period when its certificate is revoked or
9 suspended, a company shall not conduct business pursuant to this
10 division, except as may be permitted by order of the commissioner.
11 However, the revocation, suspension, or surrender of a certificate
12 shall not affect the powers of the commissioner as provided in this
13 division.

14 (f) Fifty dollars (\$50) for investigation services in connection
15 with each application for qualification of any person under Section
16 17200.8, other than investigation services under subdivision (c)
17 of this section.

18 (g) A fee not to exceed twenty-five dollars (\$25) for the filing
19 of a notice or report required by rules adopted pursuant to
20 subdivision (a) or Section 17203.1.

21 ~~(h) (1) If costs and expenses associated with the enforcement~~
22 ~~of this division, including overhead, are or will be incurred by the~~
23 ~~commissioner during the year for which the annual license fee is~~
24 ~~levied, and that will or could result in the commissioner's incurring~~
25 ~~of costs and expenses, including overhead, in excess of the costs~~
26 ~~and expenses, including overhead, budgeted for expenditure for~~
27 ~~the year in which the annual license fee is levied, then the~~
28 ~~commissioner may levy a special assessment on each escrow agent~~
29 ~~for each office or location in an amount estimated to pay for the~~
30 ~~actual costs and expenses associated with the enforcement of this~~
31 ~~division, including overhead, in an amount not to exceed one~~
32 ~~thousand dollars (\$1,000) for each office or location. The~~
33 ~~commissioner shall notify each escrow agent by mail of the amount~~
34 ~~of the special assessment levied against it, and that payment of the~~
35 ~~special assessment is payable by the escrow agent within 60 days~~
36 ~~of receipt of notification by the commissioner. The funds received~~
37 ~~from the special assessment shall be deposited into the State~~
38 ~~Corporations Fund and shall be used only for the purposes for~~
39 ~~which the special assessment is made.~~

1 ~~(2) If payment is not made within 60 days, the commissioner~~
2 ~~may assess and collect a penalty, in addition to the special~~
3 ~~assessment, of 10 percent of the special assessment for each month~~
4 ~~or part of a month that the payment is delayed or withheld. If an~~
5 ~~escrow agent fails to pay the special assessment on or before 60~~
6 ~~days following the day upon which payment is due, the~~
7 ~~commissioner may by order summarily suspend or revoke the~~
8 ~~certificate issued to the company. If an order is made under this~~
9 ~~subdivision, the provisions of paragraph (5) of subdivision (c) shall~~
10 ~~apply.~~

11 ~~(3) If the amount collected pursuant to this subdivision exceeds~~
12 ~~the actual costs and expenses, including overhead, incurred in the~~
13 ~~administration and enforcement of this division and any deficit~~
14 ~~incurred, the excess shall be credited to each escrow agent on a~~
15 ~~pro rata basis.~~

16 SEC. 4. Section 17405.1 of the Financial Code is amended to
17 read:

18 17405.1. (a) ~~The cost of every a routine inspection and~~
19 ~~examination of a licensee or other person subject to this division~~
20 ~~shall be paid to the commissioner by the licensee or person~~
21 ~~examined, and the commissioner may maintain an action for the~~
22 ~~recovery of these costs in any court of competent jurisdiction. In~~
23 ~~determining the cost of an inspection or examination, the~~
24 ~~commissioner may use the estimated average hourly cost for all~~
25 ~~persons performing inspections or examinations of licensees or~~
26 ~~other persons subject to this division for the fiscal year. included~~
27 ~~in the annual assessment pursuant to Section 17207. The cost of~~
28 ~~a routine inspection or examination shall be determined by the~~
29 ~~expenses deemed necessary by the department to carry out its~~
30 ~~duties, including, but not limited to, the estimated cost for all~~
31 ~~persons performing inspections and examinations for the fiscal~~
32 ~~year.~~

33 (b) ~~Whenever in the judgment of the commissioner it is necessary~~
34 ~~or advisable to conduct a nonroutine inspection, including an~~
35 ~~indoctrination or preliminary examination in subdivision (d) of~~
36 ~~Section 17405, or conduct an examination of, or to devote any~~
37 ~~extraordinary attention to, any licensee, the commissioner may do~~
38 ~~so and charge and collect from the licensee an amount not~~
39 ~~exceeding the department's expenses, including, but not limited~~
40 ~~to, the average hourly cost for each examiner engaged in the~~

1 *examination and compensation of employees. The commissioner*
 2 *may maintain an action for the recovery of these costs in any court*
 3 *of competent jurisdiction.*

4 *(c) Whenever in the judgment of the commissioner it is necessary*
 5 *or expedient for any examiner engaged in any examination to*
 6 *travel within or outside this state, the commissioner may charge*
 7 *for the travel expenses of the examiner.*

8 ~~For~~

9 *(d) For the purposes of this section only, no person other than*
 10 *a licensee shall be deemed to be a person subject to this division*
 11 *unless and until the person is determined to be a person subject to*
 12 *this division by an administrative hearing in accordance with*
 13 *Chapter 5 (commencing with Section 11500) of Part 1 of Division*
 14 *3 of Title 2 of the Government Code or by a judicial hearing in*
 15 *any court of competent jurisdiction.*

16 SEC. 5. Section 22107 of the Financial Code is amended to
 17 read:

18 ~~22107. (a) Each finance lender and broker licensee shall pay~~
 19 ~~to the commissioner its pro rata share of all costs and expenses,~~
 20 ~~including the costs and expenses associated with the licensing of~~
 21 ~~mortgage loan originators it employs, reasonably incurred in the~~
 22 ~~administration of this division, as estimated by the commissioner,~~
 23 ~~for the ensuing year and any deficit actually incurred or anticipated~~
 24 ~~in the administration of the program in the year in which the~~
 25 ~~assessment is made. The pro rata share shall be the proportion that~~
 26 ~~a licensee's gross income bears to the aggregate gross income of~~
 27 ~~all licensees as shown by the annual financial reports to the~~
 28 ~~commissioner, for the costs and expenses remaining after the~~
 29 ~~amount assessed pursuant to subdivision (c). licensee under this~~
 30 ~~division shall pay to the commissioner its pro rata share of all~~
 31 ~~costs and expenses in an amount sufficient, in the commissioner's~~
 32 ~~judgment, to meet the expenses of the department in administering~~
 33 ~~the law for the next year that shall include, but not be limited to,~~
 34 ~~the costs of examination pursuant to Section 22707, and the~~
 35 ~~provision of a reasonable reserve for contingencies, with a~~
 36 ~~consideration of any deficit or less any surplus actually incurred~~
 37 ~~in the prior fiscal year. The pro rata share shall be determined by~~
 38 ~~the proportion which a licensee's gross income bears to the~~
 39 ~~aggregate gross income of all licensees, as shown by the annual~~

1 *financial reports to the commissioner, for the costs and expenses*
2 *remaining after the amount assessed pursuant to subdivision (c).*

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

11 (c) In the levying and collection of the assessment, a licensee
12 shall neither be assessed for nor be permitted to pay less than ~~two~~
13 ~~hundred fifty dollars (\$250)~~ *eight hundred dollars (\$800)* per
14 licensed location per year.

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

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

33 (f) Notwithstanding subdivisions (a) to (e), inclusive, the
34 commissioner may by rule require licensees to pay assessments
35 through the Nationwide Mortgage Licensing System and Registry.

36 SEC. 6. Section 22707 of the Financial Code is amended to
37 read:

38 22707. (a) The cost of ~~each~~ *a routine* examination of a licensee
39 or a person subject to this division shall be ~~paid to the~~
40 ~~commissioner by the licensee or person examined,~~ and the

1 commissioner may maintain an action for the recovery of the cost
2 in any court of competent jurisdiction. In determining the cost of
3 an examination, the commissioner may use the estimated average
4 hourly cost for all persons performing examinations of licensees
5 or other persons subject to this division for the fiscal year. *included*
6 *in the annual assessment pursuant to Section 22107. The cost of*
7 *a routine examination shall be determined by the expenses deemed*
8 *necessary by the department to carry out its duties, including, but*
9 *not limited to, the estimated cost for all persons performing*
10 *examinations for the fiscal year.*

11 (b) For the purpose of this section only, no person other than a
12 licensee shall be deemed to be a person subject to this division
13 until the person is determined to be a person subject to this division
14 by an administrative hearing in accordance with Chapter 5
15 (commencing with Section 11500) of Part 1 of Division 3 of Title
16 2 of the Government Code or by a judicial hearing in any court of
17 competent jurisdiction.

18 (c) *Whenever in the judgment of the commissioner it is necessary*
19 *or advisable to conduct a nonroutine examination of, or to devote*
20 *any extraordinary attention to, any licensee, the commissioner*
21 *may do so and charge and collect from the licensee an amount not*
22 *exceeding the department's expenses, including, but not limited*
23 *to, the estimated average hourly cost for all persons performing*
24 *the examinations and compensation of employees. The*
25 *commissioner may maintain an action for the recovery of the cost*
26 *in any court of competent jurisdiction.*

27 (d) *Whenever in the judgment of the commissioner it is necessary*
28 *or expedient for any examiner engaged in any examination to*
29 *travel within or outside this state, the commissioner may charge*
30 *for the travel expenses of the examiner.*

31 SEC. 7. Section 23016 of the Financial Code is amended to
32 read:

33 23016. (a) ~~Each licensee shall pay to the commissioner its pro~~
34 ~~rata share of all costs and expenses reasonably incurred in the~~
35 ~~administration of this division, as estimated by the commissioner,~~
36 ~~for the ensuing year and any deficit actually incurred or anticipated~~
37 ~~in the administration of the program in the year in which the~~
38 ~~assessment is made. The assessment will be based on the number~~
39 ~~of locations. under this division shall pay the commissioner its pro~~
40 ~~rata share of all costs and expenses in an amount sufficient, in the~~

1 *commissioner's judgment, to meet the expenses of the department*
2 *in administering the law for the next year that shall include, but*
3 *not be limited to, the cost of examination pursuant to Section*
4 *23046, and the provision of a reasonable reserve for contingencies,*
5 *with a consideration of any deficit or less any surplus actually*
6 *incurred in the prior fiscal year.*

7 (b) On or before the ~~20th~~ 30th day of May in each year, the
8 commissioner shall notify each licensee ~~by mail~~ of the amount
9 assessed and levied against it and that amount shall be paid within
10 30 days thereafter. If payment is not made within 30 days, the
11 commissioner may assess and collect a penalty, in addition to the
12 assessment, of 1 percent of the assessment for each month or part
13 of a month that the payment is delayed or withheld.

14 (c) If a licensee fails to pay the assessment on or before the 30th
15 day of June following the day upon which payment is due, the
16 commissioner may by order summarily suspend or revoke the
17 certificate issued to the licensee. If, after an order is made, a request
18 for hearing is filed in writing within 30 days, and a hearing is not
19 held within 60 days thereafter, the order is deemed rescinded as
20 of its effective date. During any period when its certificate is
21 revoked or suspended, a licensee 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 SEC. 8. Section 23046 of the Financial Code is amended to
27 read:

28 23046. (a) For the purpose of discovering violations of this
29 division or securing information required by the commissioner in
30 the administration and enforcement of this division, the
31 commissioner may at any time, but not less than once every two
32 years, investigate the business of deferred deposits, and examine
33 the books, accounts, records, and files used in the business of
34 deferred deposit transactions, of every person engaged in the
35 business of deferred deposit transactions, whether the person acts
36 or claims to act as a principal or an agent, or under or without the
37 authority of this division. For the purpose of examination, the
38 commissioner and the commissioner's representatives shall have
39 free access to the offices and places of business, books, accounts,
40 papers, records, files, safes, and vaults of all these persons.

1 (b) The cost of each *a routine* examination of a licensee or a
2 person subject to this division shall be paid to the commissioner
3 by the licensee or person examined, and the commissioner may
4 maintain an action for the recovery of the cost in any court of
5 competent jurisdiction. In determining the cost of an examination,
6 the commissioner may use the estimated average hourly cost for
7 all persons performing examinations of licensees or other persons
8 subject to this division for the fiscal year. *included in the annual*
9 *assessment pursuant to Section 23016. The cost of a routine*
10 *inspection or examination shall be determined by the expenses*
11 *deemed necessary by the department to carry out its duties,*
12 *including, but not limited to, the estimated cost for all persons*
13 *performing inspections and examinations for the fiscal year.*

14 (c) *Whenever in the judgment of the commissioner it is necessary*
15 *or advisable to conduct a nonroutine examination of, or to devote*
16 *any extraordinary attention to, any licensee, the commissioner*
17 *may do so and charge and collect from the licensee an amount not*
18 *exceeding the department's expenses, including, but not limited*
19 *to, the estimated average hourly cost for all persons performing*
20 *the examinations and compensation of employees. The*
21 *commissioner may maintain an action for the recovery of the cost*
22 *in any court of competent jurisdiction.*

23 (d) *Whenever in the judgment of the commissioner it is necessary*
24 *or expedient for any examiner engaged in any examination to*
25 *travel within or outside this state, the commissioner may charge*
26 *for the travel expenses of the examiner.*

27 SEC. 9. Section 50302 of the Financial Code is amended to
28 read:

29 50302. (a) As often as the commissioner deems necessary and
30 appropriate, but at least once every 48 months, the commissioner
31 shall examine the affairs of each residential mortgage lender and
32 servicer licensee for compliance with this division. The
33 commissioner shall appoint suitable persons to perform the
34 examination. The commissioner and his or her appointees may
35 examine the books, records, and documents of the licensee, and
36 may examine the licensee's officers, directors, employees, or agents
37 under oath regarding the licensee's operations. The commissioner
38 may cooperate with any agency of the state or federal government,
39 other states, agencies, the Federal National Mortgage Association,
40 or the Federal Home Loan Mortgage Corporation. The

1 commissioner may accept an examination conducted by one of
2 these entities in place of an examination by the commissioner
3 under this law, unless the commissioner determines that the
4 examination does not provide information necessary to enable the
5 commissioner to fulfill his or her responsibilities under this
6 division.

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

11 (c) Affiliates of a licensee are subject to examination by the
12 commissioner on the same terms as the licensee, but only when
13 reports from, or examination of, a licensee provides documented
14 evidence of unlawful activity between a licensee and affiliate
15 benefiting, affecting, or arising from the activities regulated by
16 this division.

17 (d) The residential mortgage lender or servicer licensee shall
18 pay, and the commissioner shall assess, *in the annual assessment*,
19 ~~the reasonable expenses~~ *cost* of any examination of the licensee
20 and affiliates, consistent with the requirements of subdivision (c)
21 of Section 50314.

22 (e) The statement of the findings of an examination shall belong
23 to the commissioner and shall not be disclosed to anyone other
24 than the licensee, law enforcement officials, or other state or federal
25 regulatory agencies for further investigation and enforcement.
26 Reports required of licensees by the commissioner under this
27 division and results of examinations performed by the
28 commissioner under this division are the property of the
29 commissioner.

30 SEC. 10. Section 50314 of the Financial Code is amended to
31 read:

32 50314. (a) Every person subject to this division shall keep
33 documents and records that will properly enable the commissioner
34 to determine whether the residential mortgage lending or residential
35 mortgage loan servicing functions performed by that person comply
36 with the provisions of this division and with all rules and orders
37 made by the commissioner under this division. Upon request of
38 the commissioner, residential mortgage lenders and residential
39 mortgage loan servicers shall file an authorization for disclosure

1 to the commissioner of financial records of the licensed business
2 pursuant to Section 7473 of the Government Code.

3 (b) The business documents and records of every residential
4 mortgage lender or residential mortgage loan servicer, whether
5 required to be licensed under this division or not, are subject to
6 inspection and examination by the commissioner at any time
7 without prior notice. The provisions of this subdivision shall not
8 apply to persons specified in subdivision (g) of Section 50003.

9 Any person subject to this division shall, upon request and within
10 the time specified in the request, allow inspection and copying of
11 any documents and records by the commissioner or his or her
12 authorized representative.

13 (c) ~~The cost of every a routine inspection and examination of~~
14 ~~a licensee or other person subject to this division shall be paid to~~
15 ~~the commissioner by the licensee or person examined, and the~~
16 ~~commissioner may maintain an action for the recovery of these~~
17 ~~costs in any court of competent jurisdiction. In determining the~~
18 ~~cost of any inspection or examination, the commissioner may use~~
19 ~~the estimated average hourly cost, including overhead, for all~~
20 ~~persons performing inspections or examinations of licensees or~~
21 ~~other persons subject to this division for the fiscal year. included~~
22 ~~in the annual assessment pursuant to Section 50401. The cost of~~
23 ~~a routine inspection or examination shall be determined by the~~
24 ~~expenses deemed necessary by the department to carry out its~~
25 ~~duties, including, but not limited to, the estimated cost for all~~
26 ~~persons performing inspections and examinations.~~

27 For the purpose of this subdivision only, no person other than a
28 licensee shall be deemed to be a person subject to this division
29 unless and until the person is determined to be a person subject to
30 this division by an administrative hearing in accordance with
31 Chapter 5 (commencing with Section 11500) of Part 1 of Division
32 3 of Title 2 of the Government Code, or by a judicial hearing in
33 any court of competent jurisdiction.

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

1 (e) Whenever in the judgment of the commissioner it is necessary
2 or advisable to conduct a nonroutine examination of, or to devote
3 any extraordinary attention to, any licensee, the commissioner
4 may do so and charge and collect from the licensee an amount not
5 exceeding the department's expenses, including, but not limited
6 to, the estimated average hourly cost for all persons performing
7 the examinations and compensation of employees. The
8 commissioner may maintain an action for the recovery of the cost
9 in any court of competent jurisdiction.

10 (f) Whenever in the judgment of the commissioner it is necessary
11 or expedient for any examiner engaged in any examination to
12 travel within or outside this state, the commissioner may charge
13 for the travel expenses of the examiner.

14 SEC. 11. Section 50401 of the Financial Code is amended to
15 read:

16 50401. (a) In addition to other fees and reimbursements
17 required to be paid under this division, each residential mortgage
18 lender or servicer licensee shall pay to the commissioner an amount
19 equal to the lesser of: (1) its pro rata share of all costs and expenses
20 (including overhead and the maintenance of a prudent reserve not
21 to exceed 90 days' costs and expenses) that the commissioner
22 reasonably expects to incur in the current fiscal year in the
23 administration of this division and not otherwise recovered by the
24 commissioner under this division or from the State Corporations
25 Fund, plus a deficit or less a surplus actually incurred during the
26 prior fiscal year; or (2) five thousand dollars (\$5,000). The pro
27 rata share shall be the greater of either one thousand dollars
28 (\$1,000) or the sum of: (A) a number derived from the ratio of the
29 aggregate principal amount of the mortgage loans secured by
30 residential real property originated by the licensee to all mortgage
31 loans secured by residential real property originated by all licensees
32 under this division, as shown by the annual financial reports to the
33 commissioner, which number is then multiplied by one-half of the
34 costs and expenses estimated by the commissioner for the current
35 fiscal year; plus (B) a number derived from the ratio of the average
36 value of mortgage loans secured by residential real property
37 serviced by a licensee to the average value of all mortgage loans
38 secured by residential real property serviced by all licensees under
39 this division, as shown by the annual financial reports to the
40 commissioner, which number is then multiplied by one-half of the

1 costs and expenses estimated by the commissioner for the current
2 fiscal year. For the purposes of this section, the “principal amount”
3 of a mortgage loan means the initial total amount a borrower is
4 obligated to repay the lender and the “average value” of loans
5 serviced means the sum of the aggregate dollar value of all
6 mortgage loans secured by residential real property serviced by a
7 licensee, calculated as of the last day of each month in the calendar
8 year just ended, divided by 12. licensee shall pay to the
9 commissioner a pro rata share of all costs and expenses in an
10 amount sufficient, in the commissioner’s judgment, to meet the
11 expenses of the department in administering the law for the next
12 year that shall include, but not be limited to, the cost of
13 examination pursuant to Sections 50302 and 50314, and the
14 provision of a reasonable reserve for contingencies, as provided
15 in subdivision (b).

16 (b) Each licensee under this division shall pay to the
17 commissioner its pro rata share of all costs and expenses deemed
18 necessary by the department to carry out its duties and maintain
19 a reasonable reserve for contingencies for the next fiscal year,
20 considering any deficit or less any surplus actually incurred in the
21 prior fiscal year, or fifteen thousand dollars (\$15,000). The pro
22 rata share shall be the greater of either two thousand five hundred
23 dollars (\$2,500) or the sum of: (1) a number derived from the ratio
24 of the aggregate principal amount of the mortgage loans secured
25 by residential real property originated by the licensee to all
26 mortgage loans secured by residential real property originated
27 by all licensees under this division, as shown by the annual
28 financial reports to the commissioner, which number is then
29 multiplied by one-half of the costs and expenses estimated by the
30 commissioner for the next fiscal year; plus (2) a number derived
31 from the ratio of the average value of mortgage loans secured by
32 residential real property serviced by a licensee to the average
33 value of all mortgage loans secured by residential real property
34 serviced by all licensees under this division, as shown by the annual
35 financial reports to the commissioner, which number is then
36 multiplied by one-half of the costs and expenses estimated by the
37 commissioner for the next fiscal year. For the purposes of this
38 section, the “principal amount” of a mortgage loan means the
39 initial total amount a borrower is obligated to repay the lender
40 and the “average value” of loans serviced means the sum of the

1 *aggregate dollar value of all mortgage loans secured by residential*
2 *real property serviced by a licensee, calculated as of the last day*
3 *of each month in the calendar year just ended, divided by 12.*

4 In order for the commissioner to calculate the assessment under
5 this section, each licensee shall file an annual report for the
6 calendar year just ended containing the information required by
7 the commissioner on or before March 1 of the year in which the
8 assessment is to be calculated.

9 In determining the amount assessed, the commissioner shall
10 consider all appropriations from the State Corporations Fund for
11 the support of this division and all reimbursements provided for
12 under this division.

13 ~~(b)~~

14 (c) In no case shall the reimbursement, payment, or other fee
15 authorized by this section exceed the cost, including overhead,
16 reasonably incurred in the administration of this division, and the
17 maintenance of a prudent reserve not to exceed 90 days' costs and
18 expenses.

19 ~~(e)~~

20 (d) On or before the 30th day of September in each year, the
21 commissioner shall notify each licensee by mail of the amount
22 assessed and levied against it and that amount shall be paid within
23 20 days. If payment is not made within 20 days, the commissioner
24 shall assess and collect a penalty, in addition to the assessment of
25 1 percent of the assessment for each month or part of a month that
26 the payment is delayed or withheld.

27 ~~(e)~~

28 (e) If a licensee fails to pay the assessment on or before the 30th
29 day following the day upon which payment is due, the
30 commissioner may by order summarily suspend or revoke the
31 license issued to the licensee. An order issued under this section
32 is not stayed by the filing of a request for a hearing. If, after an
33 order is made, the request for hearing is filed in writing within 15
34 days from the date of service of the order and a hearing is not held
35 within 60 days of the filing, the order is deemed rescinded as of
36 its effective date. During a period when its license is revoked or
37 suspended, a licensee shall not conduct business pursuant to this
38 division except as may be permitted by further order of the
39 commissioner. However, the revocation, suspension, or surrender

1 of a license shall not affect the powers of the commissioner as
2 provided in this division.

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