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AMENDED IN SENATE AUGUST 1, 2016  
AMENDED IN SENATE JUNE 13, 2016  
AMENDED IN ASSEMBLY MAY 31, 2016  
AMENDED IN ASSEMBLY MAY 10, 2016  
AMENDED IN ASSEMBLY APRIL 20, 2016  
AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2251**

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**Introduced by Assembly Member Mark Stone**  
**(Coauthors: Assembly Members Dababneh and Gonzalez)**  
(Coauthor: Senator Leno)

February 18, 2016

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An act to add Division 12.5 (commencing with Section 28100) to the Financial Code, relating to student loan servicers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2251, as amended, Mark Stone. Student loan servicers: licensing and regulation: Student Loan Servicing Act.

(1) Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business Oversight, who, among other things, generally provides for the licensure and regulation of persons who are engaged in various consumer financial businesses, including, but not limited to, the business of making consumer or commercial loans.

This bill would enact the Student Loan Servicing Act providing for the licensure, regulation, and oversight of student loan servicers by the commissioner and would define terms for its purposes. The bill would prohibit a person from ~~acting as~~ *engaging in the business of servicing* a student loan ~~servicer in this state, directly or indirectly~~, without a license, unless exempt from the licensing requirement, and would require a licensee to provide specific services to a student loan borrower and comply with reporting, auditing, and other oversight by the commissioner. The bill would require a person applying for a license to, among other things, pay an application fee, sign the application under penalty of perjury, and submit to a criminal background check by the Department of Justice. By expanding the scope of the crime of perjury and increasing who is authorized to receive criminal record information, this bill would impose a state-mandated local program. The bill would require each licensee ~~to~~ *to, among other things, file reports with the commissioner under oath*, pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of these provisions, as estimated by the commissioner, and would authorize the commissioner to enforce these provisions by, among other things, promulgating regulations, performing investigations, *suspending a license*, and enforcing the provisions ~~in a~~ *an administrative* hearing or *in court*, as specified. The bill would prohibit the public disclosure of specific information provided by a licensee to the commissioner. The bill would make the act operative on July 1, 2018, except for specific authorizations to the commissioner which may be exercised on and after January 1, 2017. The bill would make legislative findings in support of its provisions.

(2) 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.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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. The Legislature finds and declares all of the  
2 following:

3     (a) Student loan debt is a national crisis. More than 40,000,000  
4 ~~people~~ *individuals* in the United States owe some amount of student  
5 ~~educational~~ loan debt. Total student-~~educational~~ *loan* debt in the  
6 United States currently exceeds \$1.2 trillion, surpassing both the  
7 amount of credit card debt and car loans. With college costs  
8 continuing to rise, student-~~educational~~ *loan* debt continues to rise,  
9 and there is no reduction in sight.

10    (b) While California's financial aid programs are some of the  
11 strongest in the nation and our state's college graduates have among  
12 the lowest-~~educational~~ *student loan* debt burdens, California  
13 students and graduates still incur significant debt. According to  
14 the Institute for College Access & Success, 55 percent of  
15 California's graduating class of 2014 has student-~~educational~~ loan  
16 debt. According to the United States Department of Education, as  
17 of January 2015, there are approximately 4,156,000 student  
18 ~~educational~~ loan borrowers in California, and the total student  
19 ~~educational~~ loan debt outstanding for Californians is approximately  
20 \$1.2 billion.

21    (c) Student-~~educational~~ loan debt is a hindrance on the state's  
22 economy, preventing borrowers from achieving financial  
23 independence, buying property, and starting businesses.

24    (d) Student-~~educational~~ loan servicers administer student loans,  
25 serving as a critical link between borrowers and lenders in  
26 managing accounts, processing payments, and communicating  
27 directly with borrowers. Despite this critical relationship, according  
28 to the federal Consumer Financial Protection Bureau (CFPB), there  
29 are no consistent, marketwide federal standards for student  
30 ~~educational~~ loan servicing.

31    (e) The CFPB released a report in September 2015 that found  
32 that student-~~educational~~ loan borrowers encounter servicers that  
33 discourage borrower-friendly alternative payment plans, fail to  
34 respond to questions and payment processing errors, and fail to  
35 provide sufficient information to borrowers regarding payments,  
36 benefits, interest rates, and other charges.

37    (f) It is the intent of the Legislature to promote all of the  
38 following:

1 (1) Meaningful access to federal affordable repayment and loan  
2 forgiveness benefits.

3 (2) Reliable information about student-~~educational~~ loans and  
4 loan repayment options.

5 (3) Quality customer service and fair treatment.

6 SEC. 2. Division 12.5 (commencing with Section 28100) is  
7 added to the Financial Code, to read:

8  
9 DIVISION 12.5. STUDENT LOAN SERVICING ACT

10  
11 CHAPTER 1. GENERAL PROVISIONS

12  
13 Article 1. Short Title

14  
15 28100. This division may be known and cited as the “Student  
16 Loan Servicing Act.”

17  
18 Article 2. Requirement for License

19  
20 ~~28106.~~

21 28102. (a) ~~A~~ No person shall ~~only~~ engage in the business of  
22 servicing a student loan ~~within~~ in this state, directly or indirectly,  
23 as *without first obtaining a licensee license* pursuant to this  
24 division. A license shall not be transferable or assignable.

25 ~~(b) Notwithstanding subdivision (a), any of the following shall~~  
26 ~~not be required to be a licensee to engage in servicing a student~~  
27 ~~loan within this state:~~

28 (b) *This division shall not apply to any of the following:*

29 (1) A bank, trust company, or industrial loan company doing  
30 business under the authority of, or in accordance with, a license,  
31 certificate, or charter issued by the United States or any state,  
32 district, territory, or commonwealth of the United States that is  
33 authorized to transact business in this state.

34 (2) A federally chartered savings and loan association, federal  
35 savings bank, or federal credit union that is authorized to transact  
36 business in this state.

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

(4) *A public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a student loan it extended to the borrower.*

~~(5) A person who is licensed in good standing pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000)) and services student loans pursuant to Section 22340.~~

(5) *A nonprofit community service organization that meets all the criteria of Section 12104.*

(c) *A private postsecondary educational institution not exempted from the requirements of this division pursuant to subdivision (b) shall not be required to comply with this division for the servicing of a student loan it extended to a borrower that a licensee is servicing pursuant to a servicing agreement with the private postsecondary educational institution for that student loan.*

### Article 3. Definitions

~~28108.~~

28104. For the purposes of this division, the following terms have the following meanings:

(a) “Applicant” means a person applying for a license pursuant to this division.

(b) “Borrower” means either of the following:

(1) A person who has received or agreed to pay a student loan.

(2) A person who shares responsibility for repaying a student loan with a person described in paragraph (1).

(c) “Commissioner” means the Commissioner of Business Oversight.

(d) “Department” means the Department of Business Oversight.

(e) “Engage in the business” means, without limitation, servicing student loans.

(f) “In this state” means any activity of a person relating to servicing student loans that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state.

(g) “Licensee” means a person licensed pursuant to this division.

(h) “Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust, an

1 unincorporated organization, a government, or a political  
2 subdivision of a government, and any other entity.

3 (i) “Qualified written request” means a written correspondence  
4 made by a borrower, other than notice on a payment medium  
5 supplied by a licensee, that is transmitted by mail, facsimile, or  
6 electronically through an email address or Internet Web site  
7 designated by the licensee to receive communications from a  
8 borrower that does all of the following:

9 (1) Enables the licensee to identify the name and account of the  
10 borrower.

11 (2) Includes a statement of the reasons for the belief by the  
12 borrower, to the extent applicable, that the account is in error or  
13 that provides sufficient detail to the servicer regarding information  
14 sought by the borrower, such as a complete payment history for  
15 the loan or the borrower’s account, a copy of the borrower’s student  
16 loan promissory note, or the contact information for the creditor  
17 to whom the borrower’s student loan is owed.

18 (j) “Servicing” means any of the following activities related to  
19 a student loan of a borrower:

20 (1) Performing both of the following:

21 (A) Receiving any scheduled periodic payments from a borrower  
22 or any notification that a borrower made a scheduled periodic  
23 payment.

24 (B) Applying payments to the borrower’s account pursuant to  
25 the terms of the student loan or the contract governing the  
26 servicing.

27 (2) During a period when no payment is required on a student  
28 loan, performing both of the following:

29 (A) Maintaining account records for the student loan.

30 (B) Communicating with the borrower regarding the student  
31 loan on behalf of the owner of the student loan promissory note.

32 (3) Interacting with a borrower related to that borrower’s student  
33 loan, with the goal of helping the borrower avoid default on his or  
34 her student loan or facilitating the activities described in paragraph  
35 (1) or (2).

36 (k) (1) “Student loan” means any loan primarily for use to  
37 finance a postsecondary education and costs of attendance at a  
38 postsecondary institution, including, but not limited to, tuition,  
39 fees, books and supplies, room and board, transportation, and

1 miscellaneous personal expenses. A “student loan” includes a  
2 loan made to refinance a student loan.

3 (2) (A) A “student loan” shall not include an extension of credit  
4 under an open-end consumer credit plan, a reverse mortgage  
5 transaction, a residential mortgage transaction, or any other loan  
6 that is secured by real property or a dwelling.

7 (B) A “student loan” shall not include an extension of credit  
8 made by a postsecondary educational institution to a borrower if  
9 one of the following apply:

10 (i) The term of the extension of credit is no longer than the  
11 borrower’s education program.

12 (ii) The remaining, unpaid principal balance of the extension  
13 of credit is less than \$1,500 at the time of the borrower’s  
14 graduation or completion of the program.

15 (iii) The borrower fails to graduate or successfully complete  
16 his or her education program and has a balance due at the time  
17 of his or her disenrollment from the postsecondary institution.

18 (l) “Student loan servicer” means any person engaged in the  
19 business of servicing student loans.

20  
21 CHAPTER 2. LICENSING

22  
23 Article 1. Commissioner of Business Oversight

24  
25 ~~28110.~~

26 28106. (a) The commissioner shall administer the provisions  
27 of this division and may promulgate *rules and* regulations and  
28 issue orders consistent with that authority.

29 (b) Without limitation, the functions, powers, and duties of the  
30 commissioner include all of the following:

31 (1) To issue or refuse to issue a license as provided by this  
32 division.

33 (2) To revoke or suspend for cause any license as provided by  
34 this division.

35 (3) To keep records of licenses issued under this division.

36 (4) To receive, consider, investigate, and act upon complaints  
37 made in connection with a licensee.

38 (5) To prescribe the forms of and receive (A) applications for  
39 licenses and (B) reports, books, and records required to be made

1 by a licensee under this division, including annual audited financial  
2 statements.

3 (6) To subpoena documents and witnesses and compel their  
4 attendance and production, to administer oaths, and to require the  
5 production of books, papers, or other materials relevant to any  
6 inquiry authorized by this division.

7 (7) To require information with regard to an applicant that the  
8 commissioner may deem necessary, with regard for the paramount  
9 public interest in ascertaining the experience, background, honesty,  
10 truthfulness, integrity, and competency of an applicant for servicing  
11 student loans, and if an applicant is an entity other than an  
12 individual, in ascertaining the honesty, truthfulness, integrity, and  
13 competency of an officer or director of the corporation, association,  
14 or other entity, or the members of a partnership.

15 (8) To enforce by order any provision of this division.

16 (9) To levy fees, fines, and charges in an amount sufficient to  
17 cover the cost of the services performed in administering this  
18 ~~division, as set forth by rule.~~ *division.*

19 (10) To appoint examiners, *attorneys*, supervisors, experts, and  
20 special assistants as needed to effectively and efficiently administer  
21 this division.

22 ~~28112.~~

23 28108. (a) The commissioner shall have the authority to  
24 conduct investigations and examinations of an applicant or licensee  
25 as follows:

26 (1) For purposes of determining whether an applicant is eligible  
27 for a license, or that a licensee is complying with the provisions  
28 of this division or any regulation or order of the commissioner,  
29 the commissioner may access, receive, and use any books,  
30 accounts, records, files, documents, information, or evidence,  
31 including, but not limited to, any of the following relating to the  
32 intent to, or the practice of, servicing student loans for borrowers:

33 (A) Criminal, civil, and administrative history information.

34 (B) Personal history and experience information, including, but  
35 not limited to, independent credit reports obtained from a consumer  
36 ~~credit~~ reporting agency.

37 (C) Any other documents, information, or evidence that the  
38 commissioner deems relevant to the inquiry or investigation  
39 regardless of the location, possession, control, or custody of those  
40 documents, information, or evidence.



1 (2) For the purposes of investigating violations or complaints  
2 arising under this division, the commissioner may direct, subpoena,  
3 or order the attendance of, and examine under oath, any person  
4 whose testimony may be required about the student loan or account  
5 of the borrower.

6 (b) In making any examination or investigation authorized by  
7 this section, the commissioner may control access to any documents  
8 and records of the licensee or person under examination or  
9 investigation. The commissioner may take possession of the  
10 documents and records or place a person in exclusive charge of  
11 the documents and records in the place where they are usually  
12 kept. During the period of control, no person shall remove or  
13 attempt to remove any of the documents and records except  
14 pursuant to a court order or with the consent of the commissioner.  
15 Unless the commissioner has reasonable grounds to believe the  
16 documents or records of ~~an applicant~~ *a licensee* have been, or are  
17 at risk of being, altered or destroyed for purposes of concealing a  
18 violation of this division, the licensee or owner of the documents  
19 and records shall have access to the documents or records as  
20 necessary to conduct its ordinary business affairs.

21 ~~28114.~~

22 *28110.* (a) Notwithstanding any other law, the commissioner  
23 may by rule or order prescribe circumstances under which to accept  
24 electronic records or electronic signatures. This section shall not  
25 be deemed to require the commissioner to accept electronic records  
26 or electronic signatures.

27 (b) For purposes of this section, the following terms have the  
28 following meanings:

29 (1) "Electronic record" means an initial license application, or  
30 material modification of that license application, and any other  
31 record created, generated, sent, communicated, received, or stored  
32 by electronic means. "Electronic records" also includes, but is not  
33 limited to, all of the following:

34 (A) An application, amendment, supplement, and exhibit, filed  
35 for any license, consent, or other authority.

36 (B) A financial statement, report, or advertising.

37 (C) An order, license, consent, or other authority.

38 (D) A notice of public hearing, accusation, and statement of  
39 issues in connection with any application, license, consent, or other  
40 authority.

1 (E) A proposed decision of a hearing officer and a decision of  
2 the commissioner.

3 (F) The transcripts of a hearing and correspondence between a  
4 party and the commissioner directly relating to the record.

5 (G) A release, newsletter, interpretive opinion, determination,  
6 or specific ruling.

7 (H) Correspondence between a party and the commissioner  
8 directly relating to any document listed in subparagraphs (A) to  
9 (G), inclusive.

10 (2) “Electronic signature” means an electronic sound, symbol,  
11 or process attached to or logically associated with an electronic  
12 record and executed or adopted by a person with the intent to sign  
13 the electronic record.

14 (c) The Legislature finds and declares that the Department of  
15 Business Oversight has continuously implemented methods to  
16 accept records filed electronically, and is encouraged to continue  
17 to expand its use of electronic filings to the extent feasible, as  
18 budget, resources, and equipment are made available to accomplish  
19 that goal.

## 20 Article 2. Application for License

21 ~~28116.~~

22 ~~28112.~~ An applicant shall apply for a license by submitting all  
23 of the following to the commissioner:

24 (a) A completed application for a license in a form prescribed  
25 by the commissioner and signed under penalty of perjury.

26 (b) The sum of one hundred dollars (\$100) as a fee for  
27 investigating the application, plus the cost of fingerprint processing  
28 and the criminal history record check under Section ~~28118~~, ~~28116~~,  
29 and ~~two~~ *three* hundred dollars ~~(\$200)~~ (\$300) as an application fee.  
30 The investigation fee, including the amount for the criminal history  
31 record check, and the application fee are not refundable if an  
32 application is denied or withdrawn.

33 (c) ~~Financial~~—*Audited financial* statements prepared in  
34 accordance with generally accepted accounting principles and  
35 acceptable to the commissioner that indicate a net worth of at least  
36 two hundred fifty thousand dollars (\$250,000).

1     ~~28118.~~

2     28114. (a) The commissioner shall submit to the Department  
3 of Justice fingerprint images and related information required by  
4 the Department of Justice of every applicant for a license for  
5 purposes of obtaining information as to the existence and content  
6 of a record of state or federal convictions, state or federal arrests,  
7 and information as to the existence and content of a record of state  
8 or federal arrests for which the Department of Justice establishes  
9 that the person is free on bail or on his or her own recognizance  
10 pending trial or appeal.

11     (b) When received, the Department of Justice shall forward to  
12 the Federal Bureau of Investigation requests for federal summary  
13 criminal history information received pursuant to this section. The  
14 Department of Justice shall review the information returned from  
15 the Federal Bureau of Investigation and compile and disseminate  
16 a response to the commissioner.

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

20     (d) The commissioner shall request from the Department of  
21 Justice subsequent arrest notification service, as provided pursuant  
22 to Section 11105.2 of the Penal Code, for the license applicant  
23 described in subdivision (a).

24     (e) The Department of Justice shall charge ~~the applicant a fee~~  
25 *a fee, payable by the applicant*, sufficient to cover the costs of  
26 processing the requests pursuant to this section.

27     ~~28120.~~

28     28116. (a) Upon the filing of an application for a license  
29 pursuant to Section ~~28116~~ 28112 and the payment of the fees, the  
30 commissioner shall investigate the applicant and its general partners  
31 and ~~persons~~ *individuals* owning or controlling, directly or  
32 indirectly, 10 percent or more of the outstanding interests or any  
33 person responsible for the conduct of the applicant's servicing  
34 activities ~~within~~ *in* this state, if the applicant is a partnership. If  
35 the applicant is a corporation, trust, limited liability company, or  
36 association, including an unincorporated organization, the  
37 commissioner shall investigate the applicant, its principal officers,  
38 directors, managing members, and ~~persons~~ *individuals* owning or  
39 controlling, directly or indirectly, 10 percent or more of the

1 outstanding equity securities or any person responsible for the  
2 conduct of the applicant's servicing activities ~~within~~ *in* this state.

3 (b) Upon the filing of an application for a license pursuant to  
4 Section ~~28130~~ 28126 and the payment of the fees, the  
5 commissioner shall investigate the person responsible for the  
6 servicing activity of the licensee at the new location described in  
7 the application. The investigation may be limited to information  
8 that was not included in prior applications filed pursuant to this  
9 division. If the commissioner determines that the applicant has  
10 satisfied this division and does not find facts constituting reasons  
11 for denial, the commissioner shall issue and deliver a license to  
12 the applicant.

13 (c) For the purposes of this section, "principal officers" shall  
14 mean president, chief executive officer, treasurer, and chief  
15 financial officer, as may be applicable, and any other officer with  
16 direct responsibility for the conduct of the applicant's servicing  
17 activities ~~within the~~ *in this* state.

18 ~~28122.~~

19 28118. The commissioner shall, when the application is  
20 complete, including having received the information from the  
21 Department of Justice, either grant a license pursuant to this  
22 division or provide a written explanation for the denial.

23 ~~28124.~~

24 28120. (a) The proceedings for a denial of a license shall be  
25 conducted in accordance with Chapter 5 (commencing with Section  
26 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

27 (b) The commissioner may deny an application for a license for  
28 any of the following reasons:

29 (1) The applicant made a false statement of a material fact on  
30 the application.

31 (2) The applicant or an individual specified in Section ~~28120~~  
32 28116 within the last 10 years of the date of application has  
33 committed any act involving dishonesty, fraud, or deceit, or has  
34 been convicted of, or pleaded nolo contendere to, a crime  
35 substantially related to the qualifications, functions, or duties  
36 related to servicing.

37 (3) The applicant or an individual specified in Section ~~28120~~  
38 28116 has violated any provision of this division.

~~28126.~~

28122. (a) The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required by the commissioner or department during an investigation of the application.

(b) The commissioner shall notify the applicant, in writing, that if the applicant fails to submit responsive information no later than 60 days after the date the commissioner sent the written request for information, the commissioner shall deem the application abandoned.

(c) An application fee paid prior to the date an application is deemed abandoned shall not be refunded. Abandonment of an application pursuant to this subdivision shall not preclude the applicant from submitting a new application and fee for a license.

~~28128.~~

28124. A license shall remain effective until the license is either suspended or revoked by the commissioner or surrendered by the licensee.

### CHAPTER 3. LICENSEE DUTIES

~~28130.~~

28126. (a) A licensee shall notify the commissioner, in writing, of any change in the information provided in the application for a license, as applicable, not later than 10 business days after the occurrence of the event that results in the information becoming inaccurate or incomplete.

(b) (1) If a licensee seeks to change its place of business to a street address other than that designated in its license, the licensee shall provide notice to the commissioner at least 10 days prior to the change. The commissioner shall notify the licensee within 10 days if the commissioner disapproves the change, and if the commissioner does not notify the licensee of disapproval within 10 days, the change in address shall be deemed approved.

(2) If notice is not given at least 10 days prior to the change of a street address of a place of business, as required by subdivision (b), or notice is not given at least 10 days prior to engaging in *the business of servicing student loans* at a new location, the commissioner may assess a civil or administrative penalty on the licensee not to exceed five hundred dollars (\$500).

1     ~~28132.~~

2     28128. (a) A licensee seeking to engage in the business of  
3 servicing *student loans* at a new location shall submit an application  
4 for a branch office license to the commissioner at least 10 days  
5 before engaging in the business of servicing *student loans* at a new  
6 location and pay the fee required by Section ~~28116~~, 28112.

7     (b) The licensee may engage in the business of servicing *student*  
8 *loans* at the new location 10 days after the date of submission of  
9 a branch office application.

10    (c) (1) The commissioner shall approve or deny the person  
11 responsible for engaging in the business of servicing at the new  
12 location in accordance with Article 2 of Chapter 2 (commencing  
13 with Section ~~28116~~, 28112), and shall notify the licensee of this  
14 decision within 90 days of the date of receipt of the application.

15    (2) If the commissioner denies the application, the licensee shall,  
16 within 10 days of the date of receipt of notification of the  
17 commissioner's denial, submit a new application to the  
18 commissioner designating a different person responsible for  
19 engaging in the business of servicing at the new location. The  
20 commissioner shall approve or deny the different person as  
21 provided in paragraph (1).

22    (d) A licensee shall not engage in *the business of servicing*  
23 *student loans* at a new location in a name other than a name  
24 approved by the commissioner.

25    (e) A branch office license to engage in the business of servicing  
26 at a new location shall be issued in accordance with this section.  
27 A change of street address of a place of business designated in a  
28 license shall be made in accordance with Section ~~28130~~ 28126  
29 and shall not constitute a new location subject to the requirements  
30 of this section.

31    ~~28134.~~

32    28130. A licensee shall do all of the following:

33    (a) Develop policies and procedures reasonably intended to  
34 promote compliance with this division.

35    (b) File with the commissioner any report required by ~~regulation~~  
36 ~~or order~~ of the commissioner.

37    (c) Comply with the provisions of this division and any  
38 regulation or order of the commissioner.

1 (d) Submit to periodic examination by the commissioner as  
2 required by this division and any regulation or order of the  
3 commissioner.

4 (e) Advise the commissioner of filing a petition for bankruptcy  
5 within five days of the filing.

6 ~~(f) Comply with any other requirement established by regulation~~  
7 ~~or order of the commissioner.~~

8 ~~(g)~~

9 (f) Provide, free of charge on its Internet Web site, information  
10 or links to information regarding repayment and loan forgiveness  
11 options that may be available to borrowers and provide this  
12 information or these links to borrowers via written correspondence  
13 or email at least once per calendar year.

14 ~~(h)~~

15 (g) (1) Respond to a qualified written request by acknowledging  
16 receipt of the request within five business days and within 30  
17 business days, ~~to the extent possible~~, provide information relating  
18 to the request and, if applicable, the action the licensee will take  
19 to correct the account or an explanation for the licensee's position  
20 that the borrower's account is correct.

21 (2) The 30-day period described in paragraph (1) may be  
22 extended for not more than 15 days if, before the end of the 30-day  
23 period, the ~~servicer~~ licensee notifies the borrower of the extension  
24 and the reasons for the delay in responding.

25 ~~(3) During the 60-business-day period starting on the date the~~  
26 ~~servicer received a qualified written request related to a dispute~~  
27 ~~on borrower's payments, a servicer shall not provide adverse~~  
28 ~~information regarding any payment that is the subject of the~~  
29 ~~qualified written request to any consumer reporting agency.~~

30 ~~(i)~~

31 (3) *After receipt of a qualified written request related to a*  
32 *dispute on a borrower's payment on a student loan, a licensee*  
33 *shall not, for 60 days, furnish adverse information to any consumer*  
34 *reporting agency regarding any payment that is the subject of the*  
35 *qualified written request.*

36 (h) (1) Except as provided in federal law or required by a  
37 student loan agreement, a ~~servicer~~ licensee shall inquire of a  
38 borrower how to apply an overpayment to a student loan. A  
39 borrower's direction on how to apply an overpayment to a student  
40 loan shall stay in effect for any future overpayments during the

1 term of a student loan until the borrower provides different  
2 directions.

3 (2) For purposes of this subdivision, “overpayment” means a  
4 payment on a student loan in excess of the *monthly* amount due  
5 from a borrower on a student ~~loan on a monthly basis~~, *loan*, also  
6 commonly referred to as a prepayment.

7 ~~28135.~~

8 ~~28132.~~ (a) A licensee shall not be required to comply with the  
9 requirements of subdivision ~~(h)~~ (g) of Section ~~28134~~, *28130*, if  
10 the licensee reasonably determines that any of the following apply:

11 (1) A qualified written request is substantially the same as a  
12 qualified written request previously made by the borrower, for  
13 which the licensee has previously complied with its obligation to  
14 respond pursuant to subdivision ~~(h)~~ (g) of Section ~~28134~~, *28130*,  
15 unless the borrower provides new and material information to  
16 support the more recent qualified written request. New and material  
17 information means information that was not reviewed by the  
18 licensee in connection with a prior qualified written request  
19 submitted by the same borrower and that is reasonably likely to  
20 change the licensee’s prior response related to that request.

21 (2) A qualified written request is overbroad. A qualified written  
22 request is overbroad if the licensee cannot reasonably determine  
23 from the qualified written request the specific error that the  
24 borrower asserts has occurred on his or her account or the specific  
25 information the borrower is requesting related to his or her account.  
26 To the extent a licensee can reasonably identify a valid assertion  
27 of an error or valid request for information in a qualified written  
28 request that is otherwise overbroad, the licensee shall comply with  
29 the requirements of subdivision ~~(h)~~ (g) of Section ~~28134~~ *28130*  
30 with respect to that valid asserted error or request for information.

31 (3) A qualified written request is delivered to the licensee more  
32 than one year after the licensee sells, assigns, or transfers the  
33 servicing of the student loan that is the subject of the qualified  
34 written request to another servicer.

35 (b) If, pursuant to subdivision (a), a licensee determines that it  
36 is not required to comply with the requirements of subdivision ~~(h)~~  
37 (g) of Section ~~28134~~, *28130*, the licensee shall notify the borrower  
38 of the determination, and the basis for its determination, in writing  
39 not later than five business days after making such determination.



~~28136.~~

28134. (a) If the sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan the licensee shall notify the borrower in writing at least 15 days before the borrower is required to send a payment on the student loan of all of the following:

(1) The identity of the new student loan servicer and the number of the license of the new student loan servicer issued by the commissioner.

(2) The name and address of the new student loan servicer to whom subsequent payments or communications are required to be sent.

(3) The telephone numbers and Internet Web sites of the new student loan servicer.

(4) The effective date of the sale, assignment, or transfer.

(5) The date on which the licensee, as the current student loan servicer, will stop accepting payments on the borrower's student loan.

(6) The date on which the new student loan servicer will begin accepting payments on the borrower's student loan.

(b) A licensee shall transfer all information regarding a borrower, a borrower's account, and a borrower's student loan to the new licensee servicing the borrower's student loan within 45 calendar days.

~~28140.~~

28136. The licensee shall not do any of the following:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead a borrower.

(b) Engage in any unfair or deceptive practice toward any borrower or misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the student loan agreement, or the borrower's obligations under the student loan.

(c) Misapply payments made by a borrower to the outstanding balance of a student loan.

1 (d) ~~Fail~~*If the licensee is required to or voluntarily reports to a*  
2 *consumer reporting agency, fail to accurately report each*  
3 *borrower's payment performance to at least one consumer reporting*  
4 *agency that compiles and maintains files on consumers on a*  
5 *nationwide basis, upon acceptance as a data furnisher by that*  
6 *consumer reporting agency. For purposes of this subdivision, a*  
7 *consumer reporting agency that compiles and maintains files on*  
8 *consumers on a nationwide basis is one that meets the definition*  
9 *in Section 603(p) of the federal Fair Credit Reporting Act (15 USC*  
10 *U.S.C. Sec. 1681a(p)).*

11 (e) Refuse to communicate with an authorized representative  
12 of the borrower who provides a written authorization signed by  
13 the borrower, provided the licensee may adopt procedures  
14 reasonably related to verifying that the representative is in fact  
15 authorized to act on behalf of the borrower.

16 (f) Negligently or intentionally make any false statement or  
17 knowingly and willfully make any omission of a material fact in  
18 connection with any information or reports filed with the  
19 commissioner, the department, or another governmental agency.

20 ~~28142.~~

21 ~~28138.~~ Notwithstanding subdivision (b) of Section ~~28136,~~  
22 ~~28134 and unless prohibited by federal law,~~ a licensee shall retain  
23 and maintain its records of servicing a borrower's student loan for  
24 a minimum of three years after the student loan has been sold,  
25 ~~transferred, assigned, assigned, transferred, or paid in full.~~

26 ~~28144.~~

27 ~~28140.~~ A licensee shall continuously maintain a minimum net  
28 worth of at least two hundred fifty thousand dollars (\$250,000).

29 ~~28146.~~

30 ~~28142.~~ (a) A licensee shall maintain a surety bond in  
31 accordance with this section in a minimum amount of twenty-five  
32 thousand dollars (\$25,000). The bond shall be payable to the  
33 commissioner and issued by an insurer authorized to do business  
34 in this state. An original surety bond, including any and all riders  
35 and endorsements executed subsequent to the effective date of the  
36 bond, shall be filed with the commissioner within 10 days of  
37 execution. For licensees with multiple licensed locations, only one  
38 surety bond is required. The bond shall be used for the recovery  
39 of expenses, fines, and fees levied by the commissioner in  
40 accordance with this division or for losses or damages incurred by

1 borrowers as the result of a licensee's noncompliance with the  
2 requirements of this division.

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

10 (c) The commissioner may ~~by rule~~ require a higher bond amount  
11 for a licensee based on the dollar amount of servicing of student  
12 loans by that licensee.

13 ~~28148.~~

14 ~~28144.~~ (a) Each licensee shall pay to the commissioner its pro  
15 rata share of all costs and expenses reasonably incurred in the  
16 administration of this division, as estimated by the commissioner,  
17 for the ensuing year and any deficit actually incurred or anticipated  
18 in the administration of the division in the year in which the  
19 assessment is made. The pro rata share shall be the proportion that  
20 a licensee's servicing activities ~~within~~ in this state bears to the  
21 costs and expenses remaining after the amount assessed pursuant  
22 to subdivision (c).

23 (b) On or before the 30th day of September in each year, the  
24 commissioner shall notify each licensee of the amount assessed  
25 and levied against it and that amount shall be paid by October 31.  
26 If payment is not made by October 31, the commissioner shall  
27 assess and collect a penalty, in addition to the assessment, of 1  
28 percent of the assessment for each month or part of a month that  
29 the payment is delayed or withheld.

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

33 (d) If a licensee fails to pay the assessment on or before the 31st  
34 day of October, the commissioner may by order summarily suspend  
35 or revoke the license issued to the licensee. If, after an order is  
36 made, a request for hearing is filed in writing within 30 days, and  
37 a hearing is not held within 60 days thereafter, the order is deemed  
38 rescinded as of its effective date. During any period when the  
39 license is revoked or suspended, a licensee shall not engage in the  
40 business of servicing student loans ~~within~~ in this state pursuant to

1 this division except as may be permitted by order of the  
2 commissioner. However, the revocation, suspension, or surrender  
3 of a license shall not affect the powers of the commissioner as  
4 provided in this division.

5 ~~(e) The commissioner shall, by rule, establish the timelines,~~  
6 ~~fees, and assessments applicable to applicants for licenses under~~  
7 ~~this division.~~

8 ~~28150.~~

9 ~~28146.~~ (a) ~~(1)~~ A licensee shall file an annual report with the  
10 commissioner, on or before the 15th day of March, giving the  
11 relevant information that the commissioner reasonably requires  
12 concerning the business and operations conducted by the licensee  
13 ~~within~~ in the state during the preceding calendar year, including  
14 information regarding the number of loans that are sold, assigned,  
15 or transferred to another party. The individual annual reports filed  
16 pursuant to this section shall be made available to the public for  
17 ~~inspection except, upon request in the annual report to the~~  
18 ~~commissioner, the balance sheet contained in the annual report of~~  
19 ~~a sole proprietor or any other nonpublicly traded persons.~~  
20 ~~inspection.~~ The report shall be made under oath and in the form  
21 prescribed by the commissioner.

22 ~~(2) “Nonpublicly traded person” for purposes of this section~~  
23 ~~means persons with securities owned by 35 or fewer individuals.~~

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

26 ~~28151.~~

27 ~~28148.~~ (a) At the end of the licensee’s fiscal year, but in no  
28 case more than 12 months after the last audit conducted pursuant  
29 to this section, each licensee shall cause its books and accounts to  
30 be audited by an independent certified public accountant. The audit  
31 shall be sufficiently comprehensive in scope to permit the  
32 expression of an opinion on the financial statements prepared in  
33 accordance with generally accepted accounting principles and shall  
34 be performed in accordance with generally accepted auditing  
35 standards. The audit shall include a reconciliation of the licensee’s  
36 trust accounts as of the audit date.

37 (b) “Expression of an opinion” includes (1) an unqualified  
38 opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4)  
39 an adverse opinion. If a financial statement, report, certificate, or  
40 opinion of the independent certified public accountant is in any

1 way qualified, the commissioner may require the licensee to take  
2 any action that the commissioner deems appropriate to address the  
3 qualification. The commissioner may reject any financial statement,  
4 report, certificate, or opinion by notifying the licensee or other  
5 person required to make the filing of the rejection and the reason  
6 therefor. Within 30 days after the receipt of the notice, the licensee  
7 or other person shall correct the deficiencies. Failure to correct the  
8 deficiencies is a violation of this division. The commissioner shall  
9 retain a copy of all financial statements, reports, certificates, or  
10 opinions so rejected.

11 (c) If a qualified or adverse opinion is expressed or if an opinion  
12 is disclaimed, the reasons therefor shall be fully explained.

13 (d) The audit report shall be filed with the commissioner within  
14 105 days of the end of the licensee's fiscal year. The report filed  
15 with the commissioner shall be certified by the certified public  
16 accountant conducting the audit. ~~The commissioner may~~  
17 ~~promulgate rules regarding late audit reports.~~

18 (e) If a licensee required to make an audit fails to cause an audit  
19 to be made, the commissioner may cause the audit to be made by  
20 an independent certified public accountant at the licensee's  
21 expense. The commissioner shall select the independent certified  
22 public accountant by advertising for bids or by other fair and  
23 impartial means ~~that the commissioner establishes by rule.~~ *means.*  
24 The commissioner may summarily revoke the license of a licensee  
25 who fails to file a certified financial statement prepared by an  
26 independent certified public accountant as required by this division  
27 or at the request of the commissioner.

28 ~~28152.~~

29 28150. A licensee that ceases to service student loans to  
30 borrowers shall inform the commissioner in writing and surrender  
31 the license and all other indicia of license to the commissioner.  
32 The commissioner may require a licensee to file a plan for the  
33 disposition of the servicing business that includes, but is not limited  
34 to, a closing audit. Upon receipt of the written notice and plan, if  
35 required, the commissioner shall determine whether the licensee  
36 has violated this division. The commissioner shall give a licensee  
37 notice of accepting a surrendered license, and a license shall not  
38 be deemed surrendered until the commissioner accepts its tender  
39 in writing.

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28152. (a) As often as the commissioner deems necessary and appropriate, but at least once every 36 months, the commissioner shall examine the affairs of each licensee for compliance with this division. The commissioner shall appoint suitable persons to perform the examination. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state, the federal government, or other states. ~~The commissioner may accept an examination conducted by one of these entities in place of an examination by the commissioner under this law, unless the commissioner determines that the examination does not provide information necessary to enable the commissioner to fulfill his or her responsibilities under this division.~~

(b) Unless otherwise exempt pursuant to Section ~~28106~~, 28102, affiliates of a licensee are subject to examination by the commissioner on the same terms as the licensee, but only when reports from, or examination of, a licensee provides documented evidence of unlawful activity between a licensee and affiliate benefitting, affecting, or arising from the activities regulated by this division.

(c) The cost of each examination of a licensee shall be paid to the commissioner by the licensee examined, and the commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of the examination, the commissioner may use the estimated average hourly cost for all persons performing examinations of licensees or other persons subject to this division for the fiscal year.

(d) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the

1 commissioner under this division are the property of the  
2 commissioner.

3 (e) The commissioner shall provide a written statement of the  
4 findings of the examination, issue a copy of that statement to ~~each~~  
5 ~~licensee's principals, officers, or directors,~~ *the licensee* and take  
6 appropriate steps to ensure correction of any violations of this  
7 division.

8 (f) Notwithstanding any provision of this division, the  
9 commissioner shall have the authority to waive one or more branch  
10 office examinations, if the commissioner deems that the branch  
11 office examinations are not necessary for the protection of the  
12 public, due to the centralized operations of the licensee or other  
13 factors acceptable to the commissioner.

14  
15 CHAPTER 5. ENFORCEMENT  
16

17 ~~28158.~~

18 28154. (a) If a licensee fails to do either of the following, the  
19 commissioner shall impose a penalty in a sum of up to one hundred  
20 dollars (\$100) for every day:

21 (1) To make any report required by law or by the commissioner  
22 within 10 days from the day designated for the making of the  
23 report, or within any extension of time granted by the  
24 commissioner.

25 (2) To include therein any matter required by law or by the  
26 commissioner.

27 (b) The commissioner may by order summarily suspend or  
28 revoke the license if a licensee fails to file any report required by  
29 this division.

30 28156. (a) *The commissioner may, after appropriate notice*  
31 *and opportunity for hearing, by order, censure or suspend for a*  
32 *period not exceeding 12 months, or bar from any position of*  
33 *employment, management, or control of any licensee, or any other*  
34 *person, if the commissioner finds either of the following:*

35 (1) *That the censure, suspension, or bar is in the public interest*  
36 *and that the person has committed or caused a violation of this*  
37 *division or rule or order of the commissioner, which violation was*  
38 *either known or should have been known by the person committing*  
39 *or causing it or has caused material damage to the licensee or to*  
40 *the public.*

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense specified in subdivision (b) of Section 50317, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any servicing.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensee and from engaging in any business activity on the premises where a licensee is servicing.

(e) This section shall apply to any violation, conviction, plea, or judgment occurring at any time prior to and after the enactment of this section.

~~28160. (a) If the commissioner has a reasonable basis to believe that a licensee is violating or failing to comply with this division or any regulation or order of the commissioner, or servicing student loans in an unsafe or injurious manner, then the commissioner may direct the licensee to comply with the law by an order issued by the commissioner. The order shall require the licensee to show cause before the commissioner, at a time and place to be fixed by the commissioner, as to why the order should not be observed.~~

~~(b)~~



1 28158. If, after investigation, the commissioner has reasonable  
2 grounds to believe that a licensee is conducting business in an  
3 unsafe or injurious manner, the commissioner shall, by written  
4 order addressed to the licensee, direct the discontinuance of the  
5 unsafe or injurious practices. The order shall be effective  
6 immediately, but shall not become final except in accordance with  
7 the provisions of Section ~~21866~~. 28164.

8 ~~28162.~~

9 28160. Whenever, in the opinion of the commissioner, a person  
10 is engaged in the business of servicing student loans ~~within~~ *in* this  
11 state, either actually or through subterfuge, without a license from  
12 the commissioner, the commissioner may order that person to  
13 desist and refrain. If, within 30 days after an order is served, a  
14 request for a hearing is filed in writing and the hearing is not held  
15 within 60 days of the filing, the order is rescinded. This section  
16 does not apply to persons exempted under subdivision (b) of  
17 Section ~~28106~~. 28102.

18 ~~28164.~~

19 28162. If, after investigation, the commissioner has reasonable  
20 grounds to believe that a licensee ~~has violated its articles of~~  
21 ~~incorporation or any law or rule binding upon it, is failing to~~  
22 ~~comply with this division or any regulation or order of the~~  
23 ~~commissioner,~~ the commissioner shall, by written order addressed  
24 to the licensee, direct the discontinuance of the ~~violation.~~ *failure*  
25 *to comply.* The order shall be effective immediately, but shall not  
26 become final except in accordance with the provisions of Section  
27 ~~28166~~. 28164.

28 ~~28166.~~

29 28164. (a) No order issued pursuant to this chapter may  
30 become final except after notice to the affected licensee of the  
31 commissioner's intention to make the order final and of the reasons  
32 for the finding. The commissioner shall also notify the licensee  
33 that upon receiving a request, the matter will be set for hearing to  
34 commence within 15 business days after receipt. The licensee may  
35 consent to have the hearing commence at a later date. If no hearing  
36 is requested within 30 days after the mailing or service of the  
37 required notice, and none is ordered by the commissioner, the order  
38 may become final without hearing and the licensee shall  
39 immediately discontinue the practices named in the order. If a  
40 hearing is requested or ordered, it shall be held in accordance with

1 the provisions of 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), and the commissioner shall have all  
4 of the powers granted under that act. If, upon the hearing, it appears  
5 to the commissioner that the licensee is conducting business in an  
6 unsafe and injurious manner or is ~~violating its articles of~~  
7 ~~incorporation or any law of this division, or any rule binding upon~~  
8 ~~it, failing to comply with this division or any regulation or order~~  
9 ~~of the commissioner~~, the commissioner shall make the order of  
10 discontinuance final and the licensee shall immediately discontinue  
11 the practices named in the order.

12 (b) The licensee has 10 days after an order is made final to  
13 commence an action to restrain enforcement of the order. If the  
14 enforcement of the order is not enjoined within 10 days by the  
15 court in which the action is brought, the licensee shall comply with  
16 the order.

17 (c) *The commissioner may immediately revoke the licensee's*  
18 *license if the licensee fails to comply with any order issued under*  
19 *this division. The commissioner shall not revoke the license if,*  
20 *within 10 days from the effective date of the revocation order, the*  
21 *licensee secures a court order restraining the enforcement of the*  
22 *commissioner's revocation order.*

23 ~~28168. (a)~~

24 28166. The commissioner may issue an order suspending or  
25 revoking a license if, after notice and an opportunity for hearing,  
26 the commissioner finds any of the following:

27 (1)

28 (a) The licensee is violating this division or a regulation adopted  
29 or an order issued under this division.

30 (2)

31 (b) The licensee does not cooperate with an examination or  
32 investigation by the commissioner.

33 (3)

34 (c) The licensee engages in fraud, intentional misrepresentation,  
35 or gross negligence in servicing a student loan.

36 (4)

37 (d) The competence, experience, character, or general fitness  
38 of the licensee, an individual specified in Section ~~28120~~, 28116,  
39 or any person responsible for servicing a student loan for the

1 licensee indicates that it is not in the public interest to permit the  
2 licensee to continue servicing student loans.

3 ~~(5) The licensee engages in an unsafe or unsound practice.~~

4 ~~(e) The licensee engages in unsafe or injurious practice.~~

5 ~~(6)~~

6 (f) The licensee is insolvent, suspends payment of its obligations,  
7 or makes a general assignment for the benefit of its creditors.

8 ~~(7)~~

9 (g) Any fact or condition exists that, if it had existed at the time  
10 the licensee applied for the license, would have been grounds for  
11 denying the application.

12 ~~(b) In determining whether a licensee is engaging in an unsafe~~  
13 ~~or unsound practice, the commissioner may consider the size and~~  
14 ~~condition of the licensee's provision of servicing, the magnitude~~  
15 ~~of the loss, the gravity of the violation of this division, and the~~  
16 ~~previous conduct of the persons involved.~~

17 ~~28170.~~

18 28168. (a) If, after investigation, the commissioner has  
19 reasonable grounds to believe that a person has engaged or is about  
20 to engage in any act or practice constituting a violation of any  
21 provision of this division or any rule or order hereunder, the  
22 commissioner may bring an action to enjoin the acts or practices  
23 or to enforce compliance with this division or any rule or order  
24 adopted under this division. The action shall be brought in the  
25 name of the people of the State of California in the superior court.  
26 Upon a proper showing, a permanent or preliminary injunction,  
27 restraining order, or writ of mandate shall be granted. A receiver,  
28 monitor, conservator, or other designated fiduciary or officer of  
29 the court, which may include the commissioner, may be appointed  
30 for the defendant or the defendant's assets. Any other ancillary  
31 relief may be granted as appropriate.

32 A receiver, monitor, conservator, or other designated fiduciary  
33 or officer of the court appointed by the superior court pursuant to  
34 this section may, with the approval of the court, exercise any or  
35 all of the powers of the defendant's officers, directors, partners,  
36 trustees, or persons who exercise similar powers and perform  
37 similar duties. The powers include the filing of a petition for  
38 bankruptcy. No action at law or in equity may be maintained by  
39 any party against the commissioner, or a receiver, monitor,  
40 conservator, or other designated fiduciary or officer of the court,

1 by reason of their exercising these powers or performing these  
2 duties pursuant to the order of, or with the approval of, the superior  
3 court.

4 (b) If the commissioner determines it is in the public interest,  
5 the commissioner may include in any action authorized by  
6 subdivision (a) a claim for ancillary relief. The ancillary relief may  
7 include, but not be limited to, restitution or disgorgement or  
8 damages on behalf of the persons injured by the act or practice  
9 constituting the subject matter of the action. The court shall have  
10 jurisdiction to award additional relief.

11 ~~28171. (a) If, upon inspection, examination, or investigation,~~  
12 ~~the commissioner has cause to believe that a licensee or a person~~  
13 ~~is violating or has violated any provision of this division or any~~  
14 ~~rule or order thereunder, the commissioner or his or her designee~~  
15 ~~may issue a citation to that licensee or person in writing, describing~~  
16 ~~with particularity the basis of the citation. Each citation may~~  
17 ~~contain an order to correct the violation or violations identified~~  
18 ~~and provide a reasonable time period or periods by which the~~  
19 ~~violation or violations must be corrected. In addition, each citation~~  
20 ~~may assess an administrative fine not to exceed two thousand five~~  
21 ~~hundred dollars (\$2,500) that shall be deposited in the State~~  
22 ~~Corporations Fund. In assessing a fine, the commissioner shall~~  
23 ~~give due consideration to the appropriateness of the amount of the~~  
24 ~~fine with respect to factors including the gravity of the violation,~~  
25 ~~the good faith of the person or licensees cited, and the history of~~  
26 ~~previous violations. A citation issued and a fine assessed pursuant~~  
27 ~~to this section, while constituting punishment for a violation of~~  
28 ~~law, shall be in lieu of other administrative discipline by the~~  
29 ~~commissioner for the offense or offenses cited, and the citation~~  
30 ~~and fine payment thereof by a licensee shall not be reported as~~  
31 ~~disciplinary action taken by the commissioner.~~

32 ~~(b) Notwithstanding subdivision (a), nothing in this section shall~~  
33 ~~prevent the commissioner from issuing an order to desist and~~  
34 ~~refrain from engaging in a specific business or activity or activities,~~  
35 ~~or an order to suspend all business operations to a person or~~  
36 ~~licensee who is engaged in or who has engaged in continued or~~  
37 ~~repeated violations of this division. In any of these circumstances,~~  
38 ~~the sanctions authorized under this section shall be separate from,~~  
39 ~~and in addition to, all other administrative, civil, or criminal~~  
40 ~~remedies.~~

1     ~~(e) If, within 30 days from the receipt of the citation, the person~~  
2     ~~cited fails to notify the department that the person intends to request~~  
3     ~~a hearing pursuant to Section 28176, the citation shall be deemed~~  
4     ~~final.~~

5     ~~(d) After the exhaustion of the review procedures provided for~~  
6     ~~in this section, the commissioner may apply to the appropriate~~  
7     ~~superior court for a judgment in the amount of the administrative~~  
8     ~~fine and an order compelling the cited person to comply with the~~  
9     ~~order of the commissioner. The application, which shall include~~  
10    ~~a certified copy of the final order of the commissioner, shall~~  
11    ~~constitute a sufficient showing to warrant the issuance of the~~  
12    ~~judgment and order.~~

13     28170. (a) *If, upon inspection, examination or investigation,*  
14     *based upon a complaint or otherwise, the department has cause*  
15     *to believe that a person is engaged in the business of servicing*  
16     *student loans without a license, or a licensee or person is violating*  
17     *any provision of this division or any rule or order thereunder, the*  
18     *department may issue a citation to that person in writing,*  
19     *describing with particularity the basis of the citation. Each citation*  
20     *may contain an order to desist and refrain and an assessment of*  
21     *an administrative penalty not to exceed two thousand five hundred*  
22     *dollars (\$2,500). All penalties collected under this section shall*  
23     *be deposited in the State Corporations Fund.*

24     (b) *The sanctions authorized under this section shall be separate*  
25     *from, and in addition to, all other administrative, civil, or criminal*  
26     *remedies.*

27     (c) *If within 30 days from the receipt of the citation the person*  
28     *cited fails to notify the department that the person intends to*  
29     *request a hearing as described in subdivision (d), the citation shall*  
30     *be deemed final.*

31     (d) *Any hearing under this section shall be conducted in*  
32     *accordance with Chapter 5 (commencing with Section 11500) of*  
33     *Part 1 of Division 3 of Title 2 of the Government Code, and in all*  
34     *states the commissioner has all the powers granted therein.*

35     (e) *After the exhaustion of the review procedures provided for*  
36     *in this section, the department may apply to the appropriate*  
37     *superior court for a judgment in the amount of the administrative*  
38     *penalty and order compelling the cited person to comply with the*  
39     *order of the department. The application, which shall include a*  
40     *certified copy of the final order of the department, shall constitute*

1 *a sufficient showing to warrant the issuance of the judgment and*  
2 *order.*

3 28172. (a) Any person who violates a provision of this  
4 division, or any rule or order under this division, shall be liable  
5 for a civil penalty not to exceed two thousand five hundred dollars  
6 (\$2,500) for each violation. This penalty shall be assessed and  
7 recovered in a civil action brought in the name of the people of  
8 the State of California by the commissioner in any court of  
9 competent jurisdiction.

10 (b) As applied to the penalties for acts in violation of this  
11 division, the remedies provided by this section and by other  
12 sections of this division are not exclusive, and may be sought and  
13 employed in any combination to enforce the provisions of this  
14 division.

15 28174. (a) The commissioner may refer the evidence that is  
16 available concerning any violation of this division or of any rule  
17 or order adopted under this division to the district attorney of the  
18 county in which the violation occurred. The district attorney may,  
19 with or without the commissioner's referral, institute criminal  
20 proceedings under this division. The commissioner and his or her  
21 counsel, deputies, or assistants may, upon request of the district  
22 attorney, assist the district attorney in presenting the law or facts  
23 at the trial.

24 (b) After an examination, investigation, or hearing under this  
25 division, if the commissioner deems it of public interest or  
26 advantage, he or she may certify a record to the proper prosecuting  
27 official of the county or city in which the act complained of,  
28 examined, or investigated occurred.

29 28176. All hearings provided for in this division shall be  
30 conducted in accordance with the provisions of Chapter 5  
31 (commencing with Section 11500) of Part 1 of Division 3 of Title  
32 2 of the Government Code. The commissioner has all the powers  
33 granted therein.

34  
35 CHAPTER 6. MISCELLANEOUS  
36

37 28178. If any provision of this division or the application  
38 thereof to any person or circumstances is held invalid, illegal, or  
39 unenforceable, such invalidity, illegality, or unenforceability shall  
40 not affect other provisions or applications of this division that can

1 be given effect without the invalid, illegal, or unenforceable  
2 provision or application, and, to this end, the provisions of this  
3 division are declared to be severable.

4 28180. The rights and remedies provided in this division are  
5 in addition to any other rights and remedies provided by law.

6 ~~28181.~~

7 28182. This division shall become operative on July 1, 2018.  
8 The commissioner may take any necessary actions to exercise the  
9 authority pursuant to ~~subdivision (a) of Section 28110~~; *this division*  
10 *to prepare for the July 1, 2018, operative date* on and after January  
11 1, 2017.

12 SEC. 3. 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.

21 SEC. 4. The Legislature finds and declares that Section 2 of  
22 this act, which adds ~~Sections 28150 and 28154~~ *Section 28152* to  
23 the Financial Code, imposes a limitation on the public's right of  
24 access to the meetings of public bodies or the writings of public  
25 officials and agencies within the meaning of Section 3 of Article  
26 I of the California Constitution. Pursuant to that constitutional  
27 provision, the Legislature makes the following findings to  
28 demonstrate the interest protected by this limitation and the need  
29 for protecting that interest:

30 Protecting from public disclosure limited confidential  
31 information provided by licensees to the Commissioner of Business  
32 Oversight properly balances protecting legitimate private economic  
33 interests and public interests in effective regulation.