

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

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

February 18, 2016

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 Borrower's Bill of Rights.

(1) Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business ~~Oversight~~ *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 Borrower's Bill of Rights providing for the licensure, regulation, and oversight of student loan servicers ~~engaging in the servicing of student loans for borrowers, as~~

~~those terms are defined, by the commissioner.~~ *commissioner and would define terms for its purposes.* The bill would prohibit a person from acting as a student loan servicer without a license, unless exempt from the licensing requirement, and would require a licensee to provide specific services to a student loan ~~borrower.~~ *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 the actual costs for processing an application and the investigation of the application;~~ *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 specify the basis for the commissioner to deny, revoke, or suspend a license that includes, among other bases, a failure to comply with an investigation by the commissioner. The bill would make legislative findings in support of its provisions. *The bill would require each licensee to 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, and enforcing the provisions in a hearing or court, as specified. The bill would prohibit the public disclosure of specific information provided by a licensee to the commissioner.*

(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 in the United States owe some amount of student
5 educational loan debt. Total student educational debt in the United
6 States currently exceeds \$1.2 trillion, surpassing both the amount
7 of credit card debt and car loans. With college costs continuing to
8 rise, student educational debt continues to rise, and there is no
9 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 debt burdens, California students and
13 graduates still incur significant debt. According to ~~The~~ *the* Institute
14 for College Access & Success, 55 percent of California's
15 graduating class of 2014 has student educational loan debt.
16 According to the United States Department of Education, as of
17 January 2015, there were approximately 4,156,000 student
18 educational loan borrowers in California, and the total student
19 educational loan debt outstanding for Californians was
20 approximately \$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. CALIFORNIA STUDENT LOAN
10 BORROWER’S BILL OF RIGHTS

11
12 CHAPTER 1. GENERAL PROVISIONS

13
14 Article 1. Short Title

15
16 28100. This division may be known and cited as the “California
17 Student Loan Borrower’s Bill of Rights.”

18
19 Article 2. Requirement for License

20
21 ~~28102.~~

22 28106. (a) A person shall only ~~act as a student loan servicer,~~
23 *engage in the business of servicing a student loan within this state,*
24 directly or indirectly, as a licensee pursuant to this division. A
25 license shall not be transferable or assignable.

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

29 ~~(1) A person authorized to service student loans to borrowers~~
30 ~~pursuant to federal law.~~

31 ~~(2)~~

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

38 ~~(3)~~

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

4 ~~(4)~~

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

8 ~~(5) A wholly owned service corporation of a savings and loan
9 association or savings bank organized under the laws of this state
10 or the wholly owned service corporation of a federally chartered
11 savings and loan association or savings bank that is authorized to
12 transact business in this state.~~

13 (4) *A nonprofit postsecondary educational institution servicing
14 a student loan it extended to the borrower.*

15 (5) *A person who is licensed in good standing pursuant to the
16 California Finance Lenders Law (Division 9 (commencing with
17 Section 22000)) and services student loans pursuant to Section
18 22340.*

19
20 Article 3. Definitions

21
22 ~~28104.~~

23 28108. For the purposes of this division, the following terms
24 have the following meanings:

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

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

28 (1) A person who ~~is a resident of the state who~~ has received or
29 agreed to pay a student loan.

30 (2) A person who ~~is a resident of the state who~~ shares
31 responsibility for repaying a student loan with a person described
32 in paragraph (1).

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

35 ~~(d) “Control” means the possession, directly or indirectly, of
36 the power to direct, or cause the direction of, the management and
37 policies of a licensee under this division, whether through voting
38 or through the ownership of voting power of an entity that
39 possesses voting power of the licensee, or otherwise. Control is
40 presumed to exist if a person, directly or indirectly, owns, controls,~~

1 or holds 10 percent or more of the voting power of a licensee or
 2 of an entity that owns, controls, or holds, with power to vote, 10
 3 percent or more of the voting power of a licensee. A person shall
 4 not be deemed to control a licensee solely by reason of his or her
 5 status as an officer or director of the licensee.

6 (e)

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

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

15 (f) “In this state” means any activity of a person relating to
 16 servicing student loans that originates from this state and is
 17 directed to persons outside this state, or that originates from
 18 outside this state and is directed to persons inside this state, or
 19 that originates inside this state and is directed to persons inside
 20 this state, or that leads to the formation of a contract and the offer
 21 or acceptance thereof is directed to a person in this state, whether
 22 from inside or outside this state and whether the offer was made
 23 inside or outside this state.

24 (f)

25 (g) “Licensee” means a natural person licensed under pursuant
 26 to this division.

27 (g)

28 (h) “Person” means a natural person, a sole proprietorship, an
 29 individual, a corporation, a partnership, a limited liability company,
 30 an association, a trust, a joint venture, an association, a joint stock
 31 company, a trust, an unincorporated organization, a joint stock
 32 company, a government, or a political subdivision of a government,
 33 and any other entity.

34 (h)

35 (i) “Qualified written request” means a written correspondence
 36 made by a borrower, other than notice on a payment medium
 37 supplied by a licensee, that is transmitted by mail, facsimile, or
 38 electronically through an email address or Internet Web site
 39 designated by the licensee to receive communications from
 40 borrowers a borrower that does all of the following:

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

3 (2) ~~Includes,~~ *Requests, in sufficient detail,* to the extent
4 applicable, ~~either any of the following:~~

5 (A) ~~Sufficient detail regarding the information~~ *Information*
6 ~~sought by the borrower.~~ *borrower; including, but not limited to, a*
7 *complete payment history of the student loan or the borrower's*
8 *account, the promissory note, and the contact information for the*
9 *creditor to whom the student loan is owed.*

10 (B) A statement of the reasons for the belief of the borrower
11 that there is an error regarding the account of the borrower.

12 (i)

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

15 (1) Performing both of the following:

16 (A) Receiving any scheduled periodic payments from a borrower
17 or any notification that a borrower made a scheduled periodic
18 payment.

19 (B) Applying payments to the borrower’s account pursuant to
20 the terms of the student loan or the contract governing the
21 servicing.

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

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

25 (B) Communicating with the borrower regarding the student
26 loan on behalf of the student loan’s holder.

27 (3) Interactions with a borrower, including, but not limited to,
28 activities to help prevent default on obligations arising from a
29 student loan or conducted to facilitate the activities described in
30 paragraph (1) or (2).

31 (j)

32 (k) “Student loan” means any loan primarily for ~~personal~~ use
33 to finance ~~a postsecondary education or other school-related~~
34 ~~expenses.~~ *and costs of attendance at the postsecondary institution,*
35 *including, but not limited to, tuition, fees, books and supplies, room*
36 *and board, transportation, and miscellaneous personal expenses.*

37 (k) “Student loan servicer” means, ~~to the extent authorized by~~
38 ~~federal law,~~ a person responsible for servicing a student loan for
39 a borrower.

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

3

4

CHAPTER 2. LICENSING

5

6

Article 1. Commissioner of Business Oversight

7

8 ~~28108.~~

9

28110. (a) The commissioner shall administer the provisions
10 of this division.

11

(b) The commissioner may promulgate regulations and issue
12 orders to further the purposes of this division.

13

(c) Without limitation, the functions, powers, and duties of the
14 commissioner include all of the following:

15

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

17

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

19

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

20

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

22

(5) To prescribe the forms of and receive (A) applications for
23 licenses and (B) reports, books, and records required to be made
24 by a licensee under this division, including annual audited financial
25 statements.

26

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

30

(7) To require information with regard to an applicant that the
31 commissioner may deem necessary, with regard for the paramount
32 public interest in ascertaining the experience, background, honesty,
33 truthfulness, integrity, and competency of an applicant for servicing
34 student loans, and if an applicant is an entity other than an
35 individual, in ascertaining the honesty, truthfulness, integrity, and
36 competency of an officer or director of the corporation,
37 association, or other entity, or the members of a partnership.

38

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

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

4 (10) *To appoint examiners, supervisors, experts, and special*
5 *assistants as needed to effectively and efficiently administer this*
6 *division.*

7 ~~28110.~~

8 28112. (a) The commissioner shall have the authority to
9 conduct investigations and examinations of an applicant or licensee
10 as follows:

11 (1) For purposes of determining whether an applicant is eligible
12 for a license, or that a licensee is complying with the provisions
13 of this division or any regulation or order of the commissioner,
14 the commissioner may access, receive, and use any books,
15 accounts, records, files, documents, information, or evidence,
16 including, but not limited to, any of the following relating to the
17 intent to, or the practice of, servicing student loans for borrowers:

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

19 (B) Personal history and experience information, including, but
20 not limited to, independent credit reports obtained from a consumer
21 credit reporting agency.

22 (C) Any other documents, information, or evidence that the
23 commissioner deems relevant to the inquiry or investigation
24 regardless of the location, possession, control, or custody of those
25 documents, information, or evidence.

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

31 (b) In making any examination or investigation authorized by
32 this section, the commissioner may control access to any documents
33 and records of the licensee or person under examination or
34 investigation. The commissioner may take possession of the
35 documents and records or place a person in exclusive charge of
36 the documents and records in the place where they are usually
37 kept. During the period of control, no person shall remove or
38 attempt to remove any of the documents and records except
39 pursuant to a court order or with the consent of the commissioner.
40 Unless the commissioner has reasonable grounds to believe the

1 documents or records of a licensee *an applicant* have been, or are
2 at risk of being, altered or destroyed for purposes of concealing a
3 violation of this division, the licensee or owner of the documents
4 and records shall have access to the documents or records as
5 necessary to conduct its ordinary business affairs.

6 ~~(e) The commissioner may charge an applicant or a licensee the~~
7 ~~actual costs for conducting an examination pursuant to this division.~~

8 28114. (a) *Notwithstanding any other law, the commissioner*
9 *may by rule or order prescribe circumstances under which to*
10 *accept electronic records or electronic signatures. This section*
11 *shall not be deemed to require the commissioner to accept*
12 *electronic records or electronic signatures.*

13 (b) *For purposes of this section, the following terms have the*
14 *following meanings:*

15 (1) *“Electronic record” means an initial license application,*
16 *or material modification of that license application, and any other*
17 *record created, generated, sent, communicated, received, or stored*
18 *by electronic means. “Electronic records” also includes, but is*
19 *not limited to, all of the following:*

20 (A) *An application, amendment, supplement, and exhibit, filed*
21 *for any license, consent, or other authority.*

22 (B) *A financial statement, report, or advertising.*

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

24 (D) *A notice of public hearing, accusation, and statement of*
25 *issues in connection with any application, license, consent, or*
26 *other authority.*

27 (E) *A proposed decision of a hearing officer and a decision of*
28 *the commissioner.*

29 (F) *The transcripts of a hearing and correspondence between*
30 *a party and the commissioner directly relating to the record.*

31 (G) *A release, newsletter, interpretive opinion, determination,*
32 *or specific ruling.*

33 (H) *Correspondence between a party and the commissioner*
34 *directly relating to any document listed in subparagraphs (A) to*
35 *(G), inclusive.*

36 (2) *“Electronic signature” means an electronic sound, symbol,*
37 *or process attached to or logically associated with an electronic*
38 *record and executed or adopted by a person with the intent to sign*
39 *the electronic record.*

1 (c) *The Legislature finds and declares that the Department of*
 2 *Business Oversight has continuously implemented methods to*
 3 *accept records filed electronically, and is encouraged to continue*
 4 *to expand its use of electronic filings to the extent feasible, as*
 5 *budget, resources, and equipment are made available to*
 6 *accomplish that goal.*

7
 8
 9

Article 2. Application for License

10 ~~28112. (a) Only a natural person is eligible to be an applicant~~
 11 ~~and be licensed pursuant to this division.~~

12 ~~(b)~~

13 28116. An applicant shall apply for a license by submitting all
 14 of the following to the commissioner:

15 (1)

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

18 ~~(2) A license fee determined by the commissioner that is~~
 19 ~~reasonable to pay the department's actual costs to process and~~
 20 ~~investigate the application.~~

21 (b) *The sum of one hundred dollars (\$100) as a fee for*
 22 *investigating the application, plus the cost of fingerprint processing*
 23 *and the criminal history record check under Section 28118, and*
 24 *two hundred dollars (\$200) as an application fee. The investigation*
 25 *fee, including the amount for the criminal history record check,*
 26 *and the application fee are not refundable if an application is*
 27 *denied or withdrawn.*

28 (c) *Financial statements prepared in accordance with generally*
 29 *accepted accounting principles and acceptable to the commissioner*
 30 *that indicate a net worth of at least two hundred fifty thousand*
 31 *dollars (\$250,000).*

32 ~~28114.~~

33 28118. (a) The commissioner shall submit to the Department
 34 of Justice fingerprint images and related information required by
 35 the Department of Justice of every applicant for a license pursuant
 36 ~~to Section 28112,~~ for purposes of obtaining information as to the
 37 existence and content of a record of state or federal convictions,
 38 state or federal arrests, and information as to the existence and
 39 content of a record of state or federal arrests for which the

1 Department of Justice establishes that the person is free on bail or
2 on his or her own recognizance pending trial or appeal.

3 (b) When received, the Department of Justice shall forward to
4 the Federal Bureau of Investigation requests for federal summary
5 criminal history information received pursuant to this section. The
6 Department of Justice shall review the information returned from
7 the Federal Bureau of Investigation and compile and disseminate
8 a response to the commissioner.

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

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

16 (e) The Department of Justice shall charge the ~~department~~
17 *applicant* a fee sufficient to cover the costs of processing the
18 requests pursuant to this section.

19 *28120. (a) Upon the filing of an application for a license*
20 *pursuant to Section 28116 and the payment of the fees, the*
21 *commissioner shall investigate the applicant and its general*
22 *partners and persons owning or controlling, directly or indirectly,*
23 *10 percent or more of the outstanding interests or any person*
24 *responsible for the conduct of the applicant's servicing activities*
25 *within this state, if the applicant is a partnership. If the applicant*
26 *is a corporation, trust, limited liability company, or association,*
27 *including an unincorporated organization, the commissioner shall*
28 *investigate the applicant, its principal officers, directors, managing*
29 *members, and persons owning or controlling, directly or indirectly,*
30 *10 percent or more of the outstanding equity securities or any*
31 *person responsible for the conduct of the applicant's servicing*
32 *activities within this state.*

33 *(b) Upon the filing of an application for a license pursuant to*
34 *Section 28130 and the payment of the fees, the commissioner shall*
35 *investigate the person responsible for the servicing activity of the*
36 *licensee at the new location described in the application. The*
37 *investigation may be limited to information that was not included*
38 *in prior applications filed pursuant to this division. If the*
39 *commissioner determines that the applicant has satisfied this*

1 *division and does not find facts constituting reasons for denial,*
2 *the commissioner shall issue and deliver a license to the applicant.*

3 (c) *For the purposes of this section, “principal officers” shall*
4 *mean president, chief executive officer, treasurer, and chief*
5 *financial officer, as may be applicable, and any other officer with*
6 *direct responsibility for the conduct of the applicant’s servicing*
7 *activities within the state.*

8 ~~28116.~~

9 ~~28122.~~ The commissioner shall, ~~within 60 days from the date~~
10 ~~an application pursuant to Section 28112 when the application is~~
11 complete, including having received the information from the
12 Department of Justice pursuant to Section 28114, *Justice*, either
13 grant a license pursuant to this division or provide a written
14 explanation for the denial.

15 ~~28118.~~

16 28124. (a) The proceedings for a denial of a license shall be
17 conducted in accordance with Chapter 5 (commencing with Section
18 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

23 (2) ~~The applicant or a person with control over the applicant,~~
24 *an individual specified in Section 28120* within the last 10 years
25 of the date of ~~application,~~ *application* has committed any act
26 involving dishonesty, fraud, or deceit, or has been convicted of,
27 or pleaded nolo contendere to, a crime substantially related to the
28 qualifications, functions, or duties related to servicing.

29 (3) ~~The applicant or a person with control over the applicant~~ *an*
30 *individual specified in Section 28120* has violated any provision
31 of this division.

32 ~~28120.~~

33 28126. (a) The commissioner may deem an application for a
34 license abandoned if the applicant fails to respond to any request
35 for information required by the commissioner or department during
36 an investigation of the application.

37 (b) The commissioner shall notify the applicant, in writing, that
38 if the applicant fails to submit responsive information no later than
39 60 days after the date the commissioner sent the written request

1 for information, the commissioner shall deem the application
2 abandoned.

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

7 ~~28122.~~

8 28128. A license shall remain effective until the license is
9 either suspended or revoked by the commissioner or surrendered
10 by the licensee.

11 ~~28124. The commissioner may suspend or revoke a license~~
12 ~~issued under this division if the commissioner finds that the~~
13 ~~licensee violated any provision of this division or if any fact or~~
14 ~~condition exists that, if it had existed at the time of the initial~~
15 ~~application for the license, clearly would have warranted a denial~~
16 ~~of the license.~~

17 ~~28126. A licensee that ceases to service student loans to~~
18 ~~borrowers shall inform the commissioner in writing and surrender~~
19 ~~the license and all other indicia of license to the commissioner.~~
20 ~~The commissioner may require a licensee to file a plan for the~~
21 ~~disposition of the servicing business that includes, but is not limited~~
22 ~~to, a closing audit. Upon receipt of the written notice and plan, if~~
23 ~~required, the commissioner shall determine whether the licensee~~
24 ~~has violated this division. The commissioner shall give a licensee~~
25 ~~notice of accepting a surrendered license, and a license shall not~~
26 ~~be deemed surrendered until the commissioner accepts its tender~~
27 ~~in writing.~~

28

29

CHAPTER 3. LICENSEE DUTIES

30

31 ~~28128.~~

32 28130. (a) A licensee shall notify the commissioner, in
33 writing, of any change in the information provided in the
34 application for a license, as applicable, not later than 10 business
35 days after the occurrence of the event that results in the information
36 becoming inaccurate or incomplete.

37 (b) (1) *If a licensee seeks to change its place of business to a*
38 *street address other than that designated in its license, the licensee*
39 *shall provide notice to the commissioner at least 10 days prior to*
40 *the change. The commissioner shall notify the licensee within 10*

1 days if the commissioner disapproves the change, and if the
2 commissioner does not notify the licensee of disapproval within
3 10 days, the change in address shall be deemed approved.

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

10 ~~28130. A licensee shall only provide servicing at the place of~~
11 ~~business on the license. A licensee shall obtain prior written~~
12 ~~permission from the commissioner to add or change business~~
13 ~~locations authorized to operate under the license.~~

14 28132. (a) A licensee seeking to engage in the business of
15 servicing at a new location shall submit an application for a branch
16 office license to the commissioner at least 10 days before engaging
17 in the business of servicing at a new location and pay the fee
18 required by Section 28116.

19 (b) The licensee may engage in the business of servicing at the
20 new location 10 days after the date of submission of a branch
21 office application.

22 (c) (1) The commissioner shall approve or deny the person
23 responsible for engaging in the business of servicing at the new
24 location in accordance with Article 2 of Chapter 2 (commencing
25 with Section 28116), and shall notify the licensee of this decision
26 within 90 days of the date of receipt of the application.

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

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

36 (e) A branch office license to engage in the business of servicing
37 at a new location shall be issued in accordance with this section.
38 A change of street address of a place of business designated in a
39 license shall be made in accordance with Section 28130 and shall

1 not constitute a new location subject to the requirements of this
2 section.

3 ~~28132.~~

4 28134. A licensee shall do all of the following:

5 (a) Maintain staff adequate to meet the requirements of this
6 division and every regulation and order of the commissioner.

7 (b) File with the commissioner any report required by regulation
8 or order of the commissioner.

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

11 (d) Submit to periodic examination by the commissioner as
12 required by this division and any regulation or order of the
13 commissioner.

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

16 (f) Comply with all applicable state and federal laws and tax
17 return filing requirements.

18 (g) Comply with any other requirement established by regulation
19 or order of the commissioner.

20 (h) Provide information on a publicly accessible Internet Web
21 site concerning affordable repayment and loan forgiveness options
22 that may be available to borrowers and provide to borrowers, at
23 least once per calendar year, a written correspondence or email
24 describing those options, as applicable.

25 (i) Appoint a single point of contact for a borrower wanting any
26 of the following:

27 ~~(1) Ability to enter into an agreement for, resolution on an issue
28 concerning, or general information about a repayment option that
29 requires subsequent submission of supporting documentation.~~

30 ~~(2) Modification of the terms of repayment of the student
31 education loan because of hardship.~~

32 (j) ~~If the sale, assignment, or other transfer of the servicing of
33 a student loan results in a change in the identity of the party to
34 whom the borrower is required to send payments, or direct any
35 communications concerning the student loan to, then the licensee
36 shall notify the borrower in writing at least 45 days before a
37 borrower is required to send a payment on the student loan of all
38 of the following:~~

39 ~~(1) The identity of the new student loan servicer.~~

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

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

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

7 ~~(5) The date on which the current student loan servicer will stop~~
8 ~~accepting payments on the borrower's student loan.~~

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

11 ~~(k)~~

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

18 ~~(l) Unless otherwise directed by the borrower of a student loan,~~
19 ~~upon receipt of a payment, the licensee shall apply amounts in~~
20 ~~excess of the minimum payment amount first to the interest and~~
21 ~~fees owed on the payment due date, next to the principal balance~~
22 ~~of the student loan balance bearing the highest annual percentage~~
23 ~~rate, and then to each successive interest and fees and principal~~
24 ~~balance bearing the next highest annual percentage rate until the~~
25 ~~payment is exhausted. A borrower may instruct or expressly~~
26 ~~authorize a licensee to apply excess payments in a different manner.~~
27 ~~A borrower may also voluntarily increase the periodic payment~~
28 ~~amount by various means, including, but not limited to, increasing~~
29 ~~his or her recurring electronic payment with the right to return to~~
30 ~~the original amortization schedule at any time.~~

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

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

1 (j) (1) Except as provided in federal law or required by a
2 student loan agreement, a servicer shall inquire of a borrower
3 how to apply an overpayment to a student loan. A borrower's
4 direction on how to apply an overpayment to a student loan shall
5 stay in effect for any future overpayments during the term of a
6 student loan until the borrower provides different directions.

7 (2) For purposes of this subdivision, "overpayment" means a
8 payment on a student loan in excess of the amount due from a
9 borrower on a student loan on a monthly basis, also commonly
10 referred to as a prepayment.

11 28136. (a) If the sale, assignment, or other transfer of the
12 servicing of a student loan results in a change in the identity of
13 the party to whom the borrower is required to send payments or
14 direct any communications concerning the student loan to, then
15 the licensee shall notify the borrower in writing at least 15 days
16 before a borrower is required to send a payment on the student
17 loan of all of the following:

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

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

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

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

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

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

32 (b) A licensee shall transfer all information regarding a
33 borrower, a borrower's account, and a borrower's student loan
34 to the new licensee servicing the borrower's student loan within
35 45 calendar days.

36 28138. A licensee shall notify the commissioner before selling,
37 assigning, or otherwise transferring the servicing of a student loan
38 that results in a change in the identity of the party to whom a
39 borrower is required to send payments or direct any

1 *communications concerning the student loan to, in a manner and*
2 *time prescribed by the commissioner.*

3 ~~28134.~~

4 28140. The licensee shall not do any of the following:

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

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

14 (c) Obtain property of a borrower by fraud or misrepresentation.

15 (d) ~~Knowingly misapply or recklessly apply~~ *Misapply* payments
16 made by a borrower to the outstanding balance of a student loan.

17 (e) ~~Knowingly or recklessly provide~~ *Provide* inaccurate
18 information to a credit bureau regarding a borrower.

19 (f) Fail to report both the favorable and unfavorable payment
20 history of the borrower to a nationally recognized consumer credit
21 bureau at least annually if the licensee regularly reports information
22 to a credit bureau.

23 (g) Refuse to communicate with an authorized representative
24 of the borrower who provides a written authorization signed by
25 the borrower, provided the licensee may adopt procedures
26 reasonably related to verifying that the representative is in fact
27 authorized to act on behalf of the borrower.

28 (h) Negligently or intentionally make any false statement or
29 knowingly and willfully make any omission of a material fact in
30 connection with any information or reports filed with the
31 commissioner, the department, or another governmental agency.

32 ~~28136.~~

33 28142. The licensee shall retain and maintain its records of
34 servicing a borrower's student loan for a minimum of three years
35 after the student loan has been transferred, assigned, or paid in
36 full.

37 28144. *A licensee shall continuously maintain a minimum net*
38 *worth of at least two hundred fifty thousand dollars (\$250,000).*

39 28146. (a) *A licensee shall maintain a surety bond in*
40 *accordance with this section in a minimum amount of twenty-five*

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

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

19 (c) The commissioner may by rule require a higher bond amount
20 for a licensee based on the dollar amount of servicing of student
21 loans by that licensee.

22 28147. (a) At the time of filing an application for a license
23 pursuant to this division, an applicant shall deposit with the
24 commissioner a bond satisfactory to the commissioner in the
25 amount of at least twenty-five thousand dollars (\$25,000). The
26 bond required by this section shall run to the state for the use of
27 the state and for any person who has cause against a licensee
28 under any provision of this division. A deposit given instead of the
29 bond required by this section shall not be deemed an asset of the
30 applicant or licensee for the purpose of complying with Section
31 17210. An applicant or licensee may obtain an irrevocable letter
32 of credit approved by the commissioner in lieu of the bond.

33 (b) An applicant for a license pursuant to this division or a
34 licensee may, in lieu of and subject to the same conditions as the
35 bond required by subdivision (a), deposit with the commissioner
36 a cash bond in the sum specified in subdivision (a). Evidence of
37 the cash bond shall be a deposit in the amount specified in
38 subdivision (a) in a bank or investment certificates of industrial
39 loan companies, authorized to do business in this state and insured
40 by the Federal Deposit Insurance Corporation, or an investment

1 *certificate or share account in the amount specified in subdivision*
2 *(a) issued by a savings and loan association doing business in this*
3 *state and insured by the Federal Savings and Loan Insurance*
4 *Corporation. Those deposits, certificates, or accounts shall be*
5 *assigned to and accepted and maintained by the commissioner;*
6 *upon those terms as the commissioner may prescribe, until released*
7 *by the commissioner; and shall not be deemed an asset of an*
8 *applicant or licensee for the purpose of complying with Section*
9 *28144.*

10 *(c) The bond shall be conditioned that the licensee will faithfully*
11 *conform to and abide by the provisions of this division and all the*
12 *rules made by the commissioner under this division. The bond*
13 *shall be conditioned that the licensee will honestly and faithfully*
14 *apply all funds received, will faithfully and honestly perform all*
15 *obligations and undertakings under this division, and will pay to*
16 *the state, borrower, and any person all amounts which become*
17 *due or owing to the state or to such borrower or person under the*
18 *provisions of this division. In determining the liability of the*
19 *principal and the sureties under the bond, money held in trust and*
20 *any money recovered to restore any deficiency in the trust shall*
21 *not be considered as an asset of the liquidation subject to*
22 *assessment for the cost of the liquidation. The surety under the*
23 *bond may pay the full amount of its liability thereunder to the*
24 *commissioner in lieu of payment to the state, borrower, or persons*
25 *having a cause of action against the licensee, and upon such*
26 *payment the surety is completely released from further liability*
27 *under the bond.*

28 *28148. (a) Each licensee shall pay to the commissioner its pro*
29 *rata share of all costs and expenses reasonably incurred in the*
30 *administration of this division, as estimated by the commissioner;*
31 *for the ensuing year and any deficit actually incurred or anticipated*
32 *in the administration of the division in the year in which the*
33 *assessment is made. The pro rata share shall be the proportion*
34 *that a licensee's servicing activities within this state bears to the*
35 *costs and expenses remaining after the amount assessed pursuant*
36 *to subdivision (c).*

37 *(b) On or before the 30th day of September in each year, the*
38 *commissioner shall notify each licensee of the amount assessed*
39 *and levied against it and that amount shall be paid by October 31.*
40 *If payment is not made by October 31, the commissioner shall*

1 assess and collect a penalty, in addition to the assessment, of 1
2 percent of the assessment for each month or part of a month that
3 the payment is delayed or withheld.

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

7 (d) If a licensee fails to pay the assessment on or before the 31st
8 day of October, the commissioner may by order summarily suspend
9 or revoke the license issued to the licensee. If, after an order is
10 made, a request for hearing is filed in writing within 30 days, and
11 a hearing is not held within 60 days thereafter, the order is deemed
12 rescinded as of its effective date. During any period when the
13 license is revoked or suspended, a licensee shall not engage in the
14 business of servicing student loans within this state pursuant to
15 this division except as may be permitted by order of the
16 commissioner. However, the revocation, suspension, or surrender
17 of a license shall not affect the powers of the commissioner as
18 provided in this division.

19 (e) The commissioner shall, by rule, establish the timelines,
20 fees, and assessments applicable to applicants for licenses under
21 this division.

22 28150. (a) (1) A licensee shall file an annual report with the
23 commissioner, on or before the 15th day of March, giving the
24 relevant information that the commissioner reasonably requires
25 concerning the business and operations conducted by the licensee
26 within the state during the preceding calendar year. The individual
27 annual reports filed pursuant to this section shall be made
28 available to the public for inspection except, upon request in the
29 annual report to the commissioner, the balance sheet contained
30 in the annual report of a sole proprietor or any other nonpublicly
31 traded persons. The report shall be made under oath and in the
32 form prescribed by the commissioner.

33 (2) "Nonpublicly traded person" for purposes of this section
34 means persons with securities owned by 35 or fewer individuals.

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

37 28152. A licensee that ceases to service student loans to
38 borrowers shall inform the commissioner in writing and surrender
39 the license and all other indicia of license to the commissioner.
40 The commissioner may require a licensee to file a plan for the

1 shall examine the affairs of each licensee for compliance with this
2 division. The commissioner shall appoint suitable persons to
3 perform the examination. The commissioner and his or her
4 appointees may examine the books, records, and documents of the
5 licensee, and may examine the licensee's officers, directors,
6 employees, or agents under oath regarding the licensee's
7 operations. The commissioner may cooperate with any agency of
8 the state, the federal government, or other state. The commissioner
9 may accept an examination conducted by one of these entities in
10 place of an examination by the commissioner under this law, unless
11 the commissioner determines that the examination does not provide
12 information necessary to enable the commissioner to fulfill his or
13 her responsibilities under this division.

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

18 (c) The licensee shall pay, and the commissioner shall assess,
19 the reasonable expenses of any examination of the licensee and
20 affiliates.

21

22 CHAPTER 4.5. ENFORCEMENT

23

24 28156. (a) The commissioner may, after notice and a
25 reasonable opportunity to be heard, deny, decline to renew,
26 suspend, or revoke any license if the commissioner finds that:

27 (1) The licensee has violated any provision of this division or
28 any rule or order of the commissioner thereunder.

29 (2) Any fact or condition exists that, if it had existed at the time
30 of the original application for the license, reasonably would have
31 warranted the commissioner in refusing to issue the license
32 originally.

33 (b) The power of investigation and examination by the
34 commissioner is not terminated by the denial, nonrenewal,
35 surrender, suspension, or revocation of any license issued by him
36 or her.

37 28158. (a) If a licensee fails to do either of the following, the
38 commissioner shall impose a penalty in a sum of up to one hundred
39 dollars (\$100) for every day:

1 (1) To make any report required by law or by the commissioner
2 within 10 days from the day designated for the making of the
3 report, or within any extension of time granted by the
4 commissioner.

5 (2) To include therein any matter required by law or by the
6 commissioner.

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

10 ~~28138.~~

11 28160. (a) If the commissioner has a reasonable basis to
12 believe that a licensee is violating or failing to comply with ~~any~~
13 ~~law of this state, including, but not limited to,~~ this division or any
14 regulation or order of the commissioner, or servicing student loans
15 in an unsafe or injurious manner, then the commissioner may direct
16 the licensee to comply with the law by an order issued by the
17 commissioner. The order shall require the licensee to show cause
18 before the commissioner, at a time and place to be fixed by the
19 commissioner, as to why the order should not be observed.

20 ~~(b) If, upon any hearing held pursuant to this section, the~~
21 ~~commissioner finds that the licensee is violating or failing to~~
22 ~~comply with any law of this state or servicing student loans in an~~
23 ~~unsafe or injurious manner, the commissioner may make a final~~
24 ~~order directing the licensee to comply with the law or discontinue~~
25 ~~the unsafe or injurious practices. A licensee shall comply with the~~
26 ~~final order unless, within 10 days after the issuance of the order,~~
27 ~~its enforcement is restrained in a proceeding brought by the~~
28 ~~licensee.~~

29 (b) *If, after investigation, the commissioner has reasonable*
30 *grounds to believe that a licensee is conducting business in an*
31 *unsafe or injurious manner, the commissioner shall, by written*
32 *order addressed to the licensee, direct the discontinuance of the*
33 *unsafe or injurious practices. The order shall be effective*
34 *immediately, but shall not become final except in accordance with*
35 *the provisions of Section 21866.*

36 28162. *Whenever, in the opinion of the commissioner, a person*
37 *is engaged in the business of servicing student loans within this*
38 *state, either actually or through subterfuge, without a license from*
39 *the commissioner, the commissioner may order that person to*
40 *desist and refrain. If, within 30 days after an order is served, a*

1 request for a hearing is filed in writing and the hearing is not held
2 within 60 days of the filing, the order is rescinded. This section
3 does not apply to persons exempted under subdivision (b) of Section
4 28106.

5 28164. If, after investigation, the commissioner has reasonable
6 grounds to believe that a licensee has violated its articles of
7 incorporation or any law or rule binding upon it, the commissioner
8 shall, by written order addressed to the licensee, direct the
9 discontinuance of the violation. The order shall be effective
10 immediately, but shall not become final except in accordance with
11 the provisions of Section 28166.

12 28166. (a) No order issued pursuant to this chapter may
13 become final except after notice to the affected licensee of the
14 commissioner's intention to make the order final and of the reasons
15 for the finding. The commissioner shall also notify the licensee
16 that upon receiving a request, the matter will be set for hearing
17 to commence within 15 business days after receipt. The licensee
18 may consent to have the hearing commence at a later date. If no
19 hearing is requested within 30 days after the mailing or service
20 of the required notice, and none is ordered by the commissioner,
21 the order may become final without hearing and the licensee shall
22 immediately discontinue the practices named in the order. If a
23 hearing is requested or ordered, it shall be held in accordance
24 with the provisions of the Administrative Procedure Act (Chapter
25 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
26 2 of the Government Code), and the commissioner shall have all
27 of the powers granted under that act. If, upon the hearing, it
28 appears to the commissioner that the licensee is conducting
29 business in an unsafe and injurious manner or is violating its
30 articles of incorporation or any law of this division, or any rule
31 binding upon it, the commissioner shall make the order of
32 discontinuance final and the licensee shall immediately discontinue
33 the practices named in the order.

34 (b) The licensee has 10 days after an order is made final to
35 commence an action to restrain enforcement of the order. If the
36 enforcement of the order is not enjoined within 10 days by the
37 court in which the action is brought, the licensee shall comply with
38 the order.

1 ~~28140.~~

2 28168. (a) The commissioner may issue an order suspending
3 or revoking a license if, after notice and an opportunity for hearing,
4 the commissioner finds any of the following:

5 (1) The licensee is violating this division or a regulation adopted
6 or an order issued under this division.

7 (2) The licensee does not cooperate with an examination or
8 investigation by the commissioner.

9 (3) The licensee engages in fraud, intentional misrepresentation,
10 or gross negligence in servicing a student loan.

11 (4) The competence, experience, character, or general fitness
12 of the licensee, or any director, officer, employee, or person in
13 control of a licensee, licensee, an individual specified in Section
14 28120, or any person responsible for servicing a student loan for
15 the licensee indicates that it is not in the public interest to permit
16 the licensee to continue servicing student loans.

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

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

21 (7) Any fact or condition exists that, if it had existed at the time
22 the licensee applied for the license, would have been grounds for
23 denying the application.

24 (b) In determining whether a licensee is engaging in an unsafe
25 or unsound practice, the commissioner may consider the size and
26 condition of the licensee's provision of servicing, the magnitude
27 of the loss, the gravity of the violation of this division, and the
28 previous conduct of the persons involved.

29 ~~28142. The commissioner may assess a civil penalty against~~
30 ~~a person that violates this division, or a regulation promulgated or~~
31 ~~order issued by the commissioner pursuant to this division, in an~~
32 ~~amount not to exceed one thousand dollars (\$1,000) for each~~
33 ~~violation or, in the case of a continuing violation, one thousand~~
34 ~~dollars (\$1,000) for each day or part thereof during which the~~
35 ~~violation continues, plus the department's actual costs and expenses~~
36 ~~for the investigation and prosecution of the matter, including, but~~
37 ~~not limited to, reasonable attorney's fees.~~

38 28170. (a) *If, after investigation, the commissioner has*
39 *reasonable grounds to believe that a person has engaged or is*
40 *about to engage in any act or practice constituting a violation of*

1 any provision of this division or any rule or order hereunder, the
2 commissioner may bring an action to enjoin the acts or practices
3 or to enforce compliance with this division or any rule or order
4 adopted under this division. The action shall be brought in the
5 name of the people of the State of California in the superior court.
6 Upon a proper showing, a permanent or preliminary injunction,
7 restraining order, or writ of mandate shall be granted. A receiver,
8 monitor, conservator, or other designated fiduciary or officer of
9 the court, which may include the commissioner, may be appointed
10 for the defendant or the defendant's assets. Any other ancillary
11 relief may be granted as appropriate.

12 A receiver, monitor, conservator, or other designated fiduciary
13 or officer of the court appointed by the superior court pursuant to
14 this section may, with the approval of the court, exercise any or
15 all of the powers of the defendant's officers, directors, partners,
16 trustees, or persons who exercise similar powers and perform
17 similar duties. The powers include the filing of a petition for
18 bankruptcy. No action at law or in equity may be maintained by
19 any party against the commissioner, or a receiver, monitor,
20 conservator, or other designated fiduciary or officer of the court,
21 by reason of their exercising these powers or performing these
22 duties pursuant to the order of, or with the approval of, the superior
23 court.

24 (b) If the commissioner determines it is in the public interest,
25 the commissioner may include in any action authorized by
26 subdivision (a) a claim for ancillary relief. The ancillary relief
27 may include, but not be limited to, restitution or disgorgement or
28 damages on behalf of the persons injured by the act or practice
29 constituting the subject matter of the action. The court shall have
30 jurisdiction to award additional relief.

31 28172. (a) Any person who violates a provision of this division,
32 or any rule or order under this division, shall be liable for a civil
33 penalty not to exceed two thousand five hundred dollars (\$2,500)
34 for each violation. This penalty shall be assessed and recovered
35 in a civil action brought in the name of the people of the State of
36 California by the commissioner in any court of competent
37 jurisdiction.

38 (b) As applied to the penalties for acts in violation of this
39 division, the remedies provided by this section and by other
40 sections of this division are not exclusive, and may be sought and

1 employed in any combination to enforce the provisions of this
2 division.

3 28174. (a) The commissioner may refer the evidence that is
4 available concerning any violation of this division or of any rule
5 or order adopted under this division to the district attorney of the
6 county in which the violation occurred. The district attorney may,
7 with or without the commissioner’s referral, institute criminal
8 proceedings under this division. The commissioner and his or her
9 counsel, deputies, or assistants may, upon request of the district
10 attorney, assist the district attorney in presenting the law or facts
11 at the trial.

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

17 28176. All hearings provided for in this division shall be
18 conducted in accordance with the provisions of Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of Title
20 2 of the Government Code. The commissioner has all the powers
21 granted therein.

22
23 CHAPTER 5:6. MISCELLANEOUS
24

25 ~~28144.~~

26 28178. If any provision of this division or the application
27 thereof to any person or circumstances is held invalid, illegal, or
28 unenforceable, such invalidity, illegality, or unenforceability shall
29 not affect other provisions or applications of this division which
30 can be given effect without the invalid, illegal, or unenforceable
31 provision or application, and, to this end, the provisions of this
32 division are declared to be severable.

33 ~~28146.~~

34 28180. The rights and remedies provided in this division are
35 in addition to any other rights and remedies provided by law.

36 SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

5 *SEC. 4. The Legislature finds and declares that Section 2 of*
6 *this act, which adds Sections 28150 and 28153 to the Financial*
7 *Code, imposes a limitation on the public's right of access to the*
8 *meetings of public bodies or the writings of public officials and*
9 *agencies within the meaning of Section 3 of Article I of the*
10 *California Constitution. Pursuant to that constitutional provision,*
11 *the Legislature makes the following findings to demonstrate the*
12 *interest protected by this limitation and the need for protecting*
13 *that interest:*

14 *Protecting from public disclosure limited confidential*
15 *information provided by licensees to the Commissioner of Business*
16 *Oversight properly balances protecting legitimate private economic*
17 *interests and public interests in effective regulation.*