

CHAPTER 1. General Provisions [22000 - 22172]

(Chapter 1 added by Stats. 1994, Ch. 1115, Sec. 2.)

ARTICLE 1. Definitions [22000 - 22014]

(Article 1 added by Stats. 1994, Ch. 1115, Sec. 2.)

22000.

This division is known and may be cited as the “California Finance Lenders Law.”

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22001.

(a) This division shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To ensure an adequate supply of credit to borrowers in this state.

(2) To simplify, clarify, and modernize the law governing loans made by finance lenders.

(3) To foster competition among finance lenders.

(4) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.

(5) To permit and encourage the development of fair and economically sound lending practices.

(6) To encourage and foster a sound economic climate in this state.

(b) Consumer loans, as defined in Sections 22203 and 22204, are subject to this chapter, Chapter 2 (commencing with Section 22200), Article 1 (commencing with Section 22700) of Chapter 4, and Article 2 (commencing with Section 22750) of Chapter 4.

(c) Commercial loans, as defined in Section 22502, are subject to this chapter, Chapter 3 (commencing with Section 22500), Article 1 (commencing with Section 22700) of Chapter 4, and Article 3 (commencing with Section 22780) of Chapter 4.

(Amended by Stats. 1997, Ch. 229, Sec. 1. Effective January 1, 1998.)

22002.

To accomplish its underlying purposes and policies, this division creates a class of exempt persons pursuant to Section 1 of Article XV of the California Constitution.

It is the intent of the Legislature to preserve existing exemptions under Section 1 of Article XV of the Constitution and statutory law for (a) personal property brokers formerly regulated by the Personal Property Brokers Law; (b) lenders formerly regulated by the Consumer Finance Lenders Law; and (c) lenders formerly regulated by the Commercial Finance Lenders Law; and

no finding that any provision of this division is invalid with respect to a particular lender or class of lenders shall affect the enforceability of this division with respect to any of the foregoing classifications of lenders, which shall in all events continue to be exempted by this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22003.

Unless the context otherwise requires, the definitions given in this article govern the construction of this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22004.

“Broker” includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22005.

“Commissioner” means the Commissioner of Business Oversight.

(Amended by Stats. 2013, Ch. 353, Sec. 65. Effective September 26, 2013. Operative July 1, 2013, by Sec. 129 of Ch. 353.)

22006.

As used in this division, the terms “security interest,” “accounts,” “chattel paper,” “documents,” “general intangibles,” “goods,” and “instruments” are as defined in the Uniform Commercial Code.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22007.

“Licensee” means any finance lender or broker who receives a license in accordance with this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22008.

“Person” means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22009.

“Finance lender” includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission.

It is the intent of the Legislature that the definition of finance lender shall be interpreted to include a personal property broker as referenced in Section 1 of Article XV of the California Constitution.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22010.

“Finance lender” and “broker” do not include employees regularly employed at the location specified in the license of the finance lender or broker, except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22011.

A “regulatory ceiling provision” is a statement in a section or subdivision that specifies an original bona fide principal loan amount at or above which that section or subdivision does not apply to a loan.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22012.

- (a) “Branch office license” means a license to engage in business as a finance lender or broker at a location other than the location identified in a finance lender or broker license application or amended application.
- (b) “Depository institution” has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.
- (c) “Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.
- (d) “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.
- (e) “Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling. “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.
- (f) “SAFE Act” means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).
- (g) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.
- (h) For purposes of Sections 22109.2, 22109.3, and 22109.5, “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.
- (i) For purposes of Section 22109.1, “expungement” means the subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such individual to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information, or indictment. With respect to criminal convictions in another state, that state’s definition of expungement will apply.
- (Amended by Stats. 2012, Ch. 264, Sec. 1. Effective January 1, 2013.)*

22013.

- (a) “Mortgage loan originator” means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.
- (b) Mortgage loan originator does not include any of the following:
- (1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of

Section 22014. The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

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

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

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

(5) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.

(A) For purposes of this paragraph, the term “employee” means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person.

(B) For purposes of this paragraph, the term “housing finance agency” means any authority:

(i) That is chartered by a state to help meet the affordable housing needs of the residents of the state.

(ii) That is supervised directly or indirectly by the state government.

(iii) That is subject to audit and review by the state in which it operates.

(6) (A) An employee of a bona fide nonprofit organization who exclusively originates residential mortgage loans for a bona fide nonprofit organization, and who acts as a mortgage loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(B) To qualify for the exemption under this paragraph, the bona fide nonprofit organization under this paragraph must register with the department on a form prescribed by the commissioner, along with documentation of all of the following by December 31 of each year:

(i) Status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(ii) That the organization promotes affordable housing or provides home ownership education or similar services.

(iii) That the organization conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes.

(iv) That the organization receives funding and revenue, and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients.

(v) That the organization compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

(vi) That the organization provides to, or identifies for, the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(vii) That the organization is certified by the United States Department of Housing and Urban Development as a housing counselor who engages solely in traditional housing counseling services, if applicable.

(C) The commissioner may periodically require reports regarding the activities of the bona fide nonprofit organization, and shall examine the nonprofit organization's books and records in accordance with the regulations of the United States Department of Housing and Urban Development, or any successor guidance or requirement by the Consumer Financial Protection Bureau. If the nonprofit organization fails to provide documentation as required by subparagraph (B), or if it does not continue to meet the criteria under subparagraph (B), the commissioner may revoke the nonprofit organization's status as a registered bona fide nonprofit organization.

(D) For residential mortgage loans to have terms that are favorable to the borrower, the terms shall be consistent with loan origination in a public or charitable context, rather than a commercial context.

(E) In making its determinations and examinations, the commissioner may rely on the receipt and review of:

(i) Reports filed with federal, state, or local housing agencies and authorities.

(ii) Reports and attestations prescribed by the commissioner by rule or order.

(c) "Registered mortgage loan originator" means any individual who is all of the following:

(1) Meets the definition of mortgage loan originator.

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

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

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

(Amended by Stats. 2012, Ch. 264, Sec. 2. Effective January 1, 2013.)

22014.

(a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business

cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be required to be licensed as a mortgage loan originator.

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

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

(Added by Stats. 2009, Ch. 160, Sec. 11. Effective October 11, 2009.)

ARTICLE 2. Exemptions [22050 - 22067]

(Article 2 added by Stats. 1994, Ch. 1115, Sec. 2.)

22050.

(a) This division does not apply to any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, community advantage lenders, California business and industrial development corporations when acting under federal law or other state authority, or licensed pawnbrokers when acting under the authority of that license.

“Community advantage lender” means an entity authorized by the United States Small Business Administration to deliver community advantage loans.

(b) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit, and shall not apply to a person holding a valid license issued pursuant to Section 23005 of the Financial Code when acting under the authority of that license.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a broker-dealer acting pursuant to a certificate then in effect and issued pursuant to Section 25211 of the Corporations Code.

(e) This division does not apply to any person who makes five or fewer loans in a 12-month period, these loans are commercial loans as defined in Section 22502, and the loans are incidental to the business of the person relying upon the exemption.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the

Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

(Amended by Stats. 2013, Ch. 243, Sec. 1. Effective January 1, 2014.)

22051.

This division does not apply to the following:

(a) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that loans or advances money in connection with any activity mentioned in that chapter.

(b) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis that loans or advances money to its members or in connection with those businesses.

(c) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923" that loans or advances money or credit so secured.

(d) Any corporation created pursuant to the provisions of Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22052.

This division does not apply to any loan of credit made by a person not licensed under this division pursuant to a plan having all of the following characteristics:

(a) Credit cards issued pursuant to a written application and to the plan whereby the organization issuing the cards can acquire those obligations that its members in good standing incur with those persons with whom the organization has entered into written agreements setting forth the plan, and where the obligations are incurred pursuant to those agreements; or whereby the organization issuing the cards can extend credit to its members.

(b) The fee for the credit cards is designed to cover the administrative costs of the plan and is imposed upon the issuance of the card and on annual renewal dates thereafter.

(c) Any charges, discounts, or fees resulting from the acquisition of the charges is paid to the organization issuing the credit cards by the persons, corporations, or associations with whom the organization has entered into written agreements.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22053.

In any proceeding under this law, the burden of proving an exemption is upon the person claiming it.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22054.

This division does not apply to bona fide conditional contracts of sale involving the disposition of personal property when these forms of sales agreements are not used for the purpose of evading this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22055.

This division does not apply to premium financing as defined in Section 18563.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22056.

This division does not apply to the California Infrastructure and Economic Development Bank, any program authorized pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or to the California Integrated Waste Management Board.

(Amended by Stats. 2004, Ch. 225, Sec. 10. Effective August 16, 2004.)

22057.

This division does not apply to any loan that is made or arranged by any person licensed as a real estate broker by the state and secured by a lien on real property, or to any licensed real estate broker when making such a loan. A licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a license under this division.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22058.

This division does not apply to any cemetery broker licensed under the Cemetery Act (Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code).
(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22059.

A license to act as a broker under this division does not authorize the licensee to negotiate or perform any act as a broker in connection with loans made or to be made by a lender not licensed as a finance lender under this division.
(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22060.

This division does not apply to a loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license.
(Added by Stats. 1995, Ch. 564, Sec. 6.5. Effective January 1, 1996.)

22061.

- (a) This division does not apply to any nonprofit church extension fund.
- (b) For purposes of this section:
- (1) "Nonprofit church extension fund" means a nonprofit organization affiliated with a church, that is formed for the purpose of making loans to that church's congregational organization or organizations for site acquisitions, new facilities, or improvements to existing facilities, purchased for the benefit of the church congregational organization.
- (2) What constitutes a "church" shall be determined from the following criteria, none of which has controlling weight: a distinct legal existence; a recognized creed and form of worship; a definite and distinct ecclesiastical government; a formal code of doctrine and discipline; a distinct religious history; a membership not associated with any other religion or denomination; a complete organization of ordained ministers ministering to their congregations; ordained ministers selected after completing prescribed courses of study; a literature of its own; established places of worship; regular congregations; regular religious services; schools for the religious instruction of youth; and schools for the preparation of its ministers.
- (3) "Church congregational organization" means a group of individuals who gather for the purpose of practicing the religion or manner of worship promulgated by the church with which the organization is affiliated.

(4) "Site acquisitions" means purchases of land intended for use by a church congregational organization.

(5) "New facilities" means purchases of buildings or structures intended for use by a church congregational organization.

(6) "Improvements" means purchases of materials intended to increase the quality of existing religious sites or facilities.

(c) For purposes of this section, a nonprofit church extension fund shall establish that it is exempt from federal taxation pursuant to Section 501 of Title 26 of the United States Code.

(d) For purposes of this section, no individual may be held responsible for the repayment of any loan made by a nonprofit church extension fund.

(Added by Stats. 1998, Ch. 469, Sec. 1. Effective January 1, 1999.)

22062.

(a) This division does not apply to either of the following:

(1) A commercial bridge loan made by a venture capital company to an operating company.

(2) A venture capital investment made by a venture capital company in an equity security issued by an operating company.

(b) For purposes of this section:

(1) "Venture capital company" means a person other than an individual or sole proprietorship that meets all of the following:

(A) Engages primarily in the business of promoting economic, business, or industrial development through venture capital investments or the provision of financial or management assistance to operating companies.

(B) At all times maintains at least 50 percent of its assets in venture capital investments or commitments to make venture capital investments, and maintains or, assuming consummation of the equity investment to which the commercial bridge loan relates, will maintain a material equity interest in the operating company.

(C) Approves each loan made to an operating company through the venture capital company's board of directors, executive committee, or similar policy body, based on a reasonable belief that the loan is appropriate for the operating company after reasonable inquiry concerning the operating company's financing objectives and financial situation.

(D) Complies, when making the loan, with all applicable federal and state laws and rules or orders governing securities transactions including, but not limited to, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Corporate Securities Law of 1968.

(2) "Operating company" means a person that meets all of the following:

(A) Primarily engages, wholly or substantially, directly or indirectly through a majority owned subsidiary or subsidiaries, in the production or sale, or the research or development, of a product or service other than the management or investment of capital. This shall not include any of the following:

(i) A person that is either an individual or a sole proprietorship.

(ii) A person that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person.

(B) Uses all of the proceeds of the commercial bridge loan for the operations of its business.

(C) Approves each commercial bridge loan through its board of directors, executive committee, or similar policy board, in the exercise of its fiduciary duty, based on a reasonable belief that the loan is appropriate for the operating company after reasonable inquiry concerning the operating company's financing objectives and financial situation.

(3) "Commercial bridge loan" means a loan that meets all of the following criteria:

(A) A loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit program, whether secured by personal property or unsecured, the proceeds of which are intended by the operating company for use primarily for other than personal, family, or household purposes.

(B) Is made with a maturity date not to exceed three years, and in connection with or in bona fide contemplation of, an equity investment in the operating company.

(C) Is secured, if at all, solely by the operating company's business assets, exclusive of any real property.

(D) Is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(4) For purposes of paragraph (1), "venture capital investment" is an acquisition of securities in an operating company that a person, an investment adviser of the person, or an affiliated person of either, has or obtains management rights to.

(5) "Equity security" shall have the same meaning as in Section 3(a)(11) of the federal Securities Exchange Act of 1934.

(c) For purposes of paragraph (3) of subdivision (b), for the purposes of determining whether a loan is a commercial bridge loan, a venture capital company may rely on any written statement of intended purposes signed by the operating company. The statement may be a separate statement signed by the operating company or may be contained in another document signed by the operating company, but in each case it shall be approved by its board of directors, executive committee, or similar policy body. The venture capital company may not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

(d) For purposes of subparagraph (A) of paragraph (3) of subdivision (b), the principles set forth in Section 22551 shall be used to determine whether the specified amount of a commercial bridge loan is a bona fide principal amount.

(e) Nothing in this section is intended to abrogate or diminish the application of any other laws that are designed to protect borrowers, including, but not limited to, laws pertaining to licensing, unfair competition, usury, and conflicts of interest.

(Amended by Stats. 2014, Ch. 68, Sec. 1. Effective January 1, 2015.)

22063.

(a) This division does not apply to a franchise loan made by a franchisor to a franchisee or a subfranchisor or by a subfranchisor to a franchisee.

(b) For purposes of this section:

(1) "Franchise" means "franchise," as defined in Section 31005 of the Corporations Code.

(2) "Franchisee" means "franchisee," as defined in Section 31006 of the Corporations Code.

(3) "Franchisor" means "franchisor," as defined in Section 31007 of the Corporations Code.

(4) "Area franchise" means "area franchise," as defined in Section 31008 of the Corporations Code.

(5) "Subfranchise" means "subfranchise," as defined in Section 31008.5 of the Corporations Code.

(6) "Subfranchisor" means "subfranchisor," as defined in Section 31009 of the Corporations Code.

(7) "Franchised business" means a business operated pursuant to a franchise or area franchise by a franchisee or pursuant to a franchise, area franchise or subfranchise by a subfranchisor.

(8) "Franchise loan" means a commercial loan, as defined in Section 22502, made by a franchisor to a current or prospective franchisee or subfranchisor or a commercial loan by a subfranchisor to a current or prospective franchisee for the acquisition, construction, operation, development, equipping, expansion, contraction, consolidation, merger, recapitalization, reorganization, or termination of a franchised business provided that the following conditions are satisfied:

(A) The franchisor or subfranchisor making the franchise loan shall comply with all applicable federal and state franchise disclosure and registration laws, regulations, rules and orders, including, but not limited to, the California Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) and the Federal Trade Commission Franchise Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (Code of Federal Regulations, Title 16, Chapter 1, Subchapter D, Part 436 (16 CFR 436), as amended) in connection with the offer or sale of any franchise, area franchise, or subfranchise to which the franchise loan relates.

(B) The proceeds of the franchise loan are intended by the borrowing franchisee or subfranchisor for use primarily for other than personal, family, or household purposes.

(C) The loan, if secured, is secured solely by the assets of the franchised business to which the franchise loan relates. Property used by the borrower primarily for personal, family, or household purposes, including the borrower's personal residence, shall not be taken as security for the loan.

(D) The loan is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(E) The lender shall fully and clearly disclose to the borrower, at or before the time the loan is made, the rates of interest, charges, and costs of the loan.

(c) For purposes of subparagraph (B) of paragraph (8) of subdivision (b), a lending franchisor or subfranchisor may rely on any written statement of intended purposes by the borrowing franchisee or subfranchisor. The statement may be a separate statement signed by the

borrowing franchisee or subfranchisor or may be contained in another document signed by the borrowing franchisee or subfranchisor. The lending franchisor or subfranchisor may not be required to ascertain that the proceeds of a franchise loan are used in accordance with the statement of intended purposes.

(d) Nothing in this section is intended to abrogate or diminish the application of any other laws that are designed to protect borrowers, including, but not limited to, laws pertaining to licensing, unfair competition, usury and conflicts of interest.

(Added by Stats. 2004, Ch. 458, Sec. 16. Effective September 10, 2004.)

22064.

(a) This division does not apply to the following:

(1) A program-related investment defined in subsection (c) of Section 4944 of the Internal Revenue Code and United States Treasury Regulations Section 53.4944-3 that is made by a private foundation, tax-exempt organization within the meaning of Section 509(a) of the Internal Revenue Code.

(2) A loan, guaranty, or investment made by a public charity, tax-exempt organization within the meaning of paragraph (1), (2), or (3) of subsection (a) of Section 509 of the Internal Revenue Code that meets all of the following requirements:

(A) The primary purpose of the loan, guaranty, or investment is to accomplish one or more of the exempt purposes of the public charity making the loan, as described in Section 170(c)(2)(B) of the Internal Revenue Code.

(B) Neither the production of income nor the appreciation of property is a significant purpose of the loan, guaranty, or investment.

(C) No purpose of the loan, guaranty, or investment is to accomplish one or more of the purposes described in Section 170(c)(2)(D) of the Internal Revenue Code.

(b) Subdivision (a) shall not exempt from the provisions of this division a tax-exempt organization that is making consumer loans as defined in Sections 22203 and 22204.

(c) A loan that is secured by any assets owned by an individual shall be exempt under subdivision (a) only if the individual providing the security is an "accredited investor" as defined in paragraph (5) or (6) of subsection (a) of Section 230.501 of Title 17 of the Code of Federal Regulations. Property held by an individual for personal, family, or household purposes, including an individual's personal residence, may not be taken as security for a loan.

(d) A program-related investment by a private foundation, and any loan, guaranty, or investment made by a public charity that is exempt under subdivision (a) is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(e) (1) Subdivision (a) shall exempt from the provisions of this division a program-related investment by a private foundation, or a loan, guaranty, or investment by a public charity, only if the following conditions are satisfied:

(A) The organization making the program-related investment, loan, guaranty, or investment is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is

organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.

(B) No part of the net earnings of the organization making the program-related investment, loan, guaranty or investment inures to the benefit of a private shareholder or individual.

(C) No broker's fee will be paid in connection with the making of the program-related investment, loan, guaranty, or investment or placement of the program-related investment, loan, guaranty or investment.

(2) This subdivision does not prohibit the organization making the program-related investment, loan, guaranty, or investment from charging interest on the loan or investment or fees on the guaranty.

(f) Subdivision (a) shall only exempt from the provisions of this division a program-related investment by a private foundation or a loan, guaranty, or investment by a public charity that is made for the primary purpose of accomplishing one or more of the organization's exempt purposes described in Section 501(c)(3) of the Internal Revenue Code, and no significant purpose of which is the production of income or the appreciation of property within the meaning of subsection (c) of Section 4944 of the Internal Revenue Code. A recipient shall be required to use all funds received from the private foundation or the public charity only for the charitable purposes for which the program-related investment, loan, guaranty, or investment was made.

(g) Subdivision (a) shall only exempt from the provisions of this division a program-related investment by a private foundation or a loan, guaranty, or investment by a public charity if the organization consummates not more than 35 loans in a calendar year. In the making and negotiating of these loans, the private foundation or public charity shall take into consideration the financial ability of the recipients to repay the loans in the time and manner provided.

(h) Nothing in this section is intended to abrogate or diminish the application of any other applicable laws that are designed to govern the tax-exempt organizations described in subdivision (a), including, but not limited to, laws pertaining to recordkeeping and reporting to the Attorney General and the Internal Revenue Service or to protect borrowers, including, but not limited to, laws pertaining to licenses, unfair competition, usury, and conflicts of interest.

(Amended by Stats. 2009, Ch. 103, Sec. 1. Effective January 1, 2010.)

22065.

(a) Persons not subject to this division may apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators pursuant to the federal SAFE Act.

(b) An exempt person applying under the exempt company registration procedure shall comply with all rules and orders that the commissioner deems necessary to ensure compliance with the federal SAFE Act and shall pay an annual registration fee established by the commissioner.

(c) (1) A mortgage loan originator who is an insurance producer eligible for licensure pursuant to this section shall meet all of the following requirements:

- (A) Be covered under an exclusive written contract with, and originate mortgage loans solely on behalf of, that exempt person.
- (B) Hold a current insurance producer license under Article 3 (commencing with Section 1631) of Chapter 5 of Part 2 of Division 1 of the Insurance Code that is not suspended or revoked.
- (C) Have a current notice of appointment under Article 9 (commencing with Section 1702) of Chapter 5 of Part 2 of Division 1 of the Insurance Code from an insurer that controls, is controlled by, or is under common control with that exempt person.
- (2) A licensed mortgage loan originator who is an insurance producer for an insurer authorized to do business in this state may originate loans on behalf of a person registered pursuant to subdivision (a) or on behalf of a licensed finance lender that originates loans exclusively for a single person that is not subject to licensure pursuant to subdivision (a) of Section 22050. *(Amended by Stats. 2012, Ch. 264, Sec. 3. Effective January 1, 2013.)*

22066.

- (a) The Legislature finds and declares that nonprofit organizations have an important role to play in helping individuals obtain access to affordable, credit-building small dollar loans. California law should refrain from creating statutory barriers that risk slowing the growth of these loans. This section shall be liberally construed to encourage nonprofit organizations to help facilitate the making of zero-interest, low-cost loans, through lending circles and other programs and services that allow individuals to establish and build credit histories or to improve their credit scores.
- (b) For the purposes of this section, an organization described in subdivision (c) shall be known as an exempt organization, and an organization described in subdivision (d) shall be known as a partnering organization.
- (c) There shall be exempted from this division a nonprofit organization that facilitates one or more zero-interest, low-cost loans, provided all of the following conditions are met:
- (1) The organization is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.
- (2) No part of the net earnings of the organization inures to the benefit of a private shareholder or individual.
- (3) No broker's fee is paid in connection with the making of the loan that is facilitated by the organization.
- (4) Any organization wishing to operate pursuant to an exemption granted under this section shall file an application for exemption with the commissioner, in a manner prescribed by the commissioner, and shall pay a fee to the commissioner, in an amount calculated by the commissioner to cover his or her costs to administer this section and Section 22067. The commissioner may refuse to grant an exemption, or to suspend or revoke a previously issued exemption if he or she finds that one or more of the provisions of this section were not met or are not being met by the organization and that denial, suspension, or revocation of the exemption is in the best interests of the public.

- (5) Every organization whose exemption is approved by the commissioner shall file an annual report with the commissioner on or before March 15 of each year, containing relevant information that the commissioner reasonably requires concerning lending facilitated by the organization within the state during the preceding calendar year at all locations at which the organization facilitates lending. The commissioner shall compile the information submitted pursuant to this paragraph for use in preparing the report required by Section 22067.
- (6) Any loan made pursuant to this section shall comply with the following requirements:
- (A) The loan shall be unsecured.
- (B) No interest may be imposed.
- (C) An administrative fee may be charged in an amount not to exceed the following:
- (i) Seven percent of the principal amount, exclusive of the administrative fee, or ninety dollars (\$90), whichever is less, on the first loan made to a borrower.
- (ii) Six percent of the principal amount, exclusive of the administrative fee, or seventy-five dollars (\$75), whichever is less, on the second and subsequent loans made to that borrower.
- (D) An organization shall not charge the same borrower an administrative fee more than once in any four-month period. Each administrative fee shall be fully earned immediately upon consummation of a loan agreement.
- (E) Notwithstanding subdivision (a) of Section 22320.5 and in lieu of any other type of delinquency fee or late fee, an organization may require reimbursement from a borrower of up to ten dollars (\$10) to cover an insufficient funds fee incurred by that organization due to actions of the borrower. No organization shall charge more than two insufficient funds fees to the same borrower in a single month.
- (F) The following information shall be disclosed to the consumer in writing, in a typeface no smaller than 12-point type, at the time of the loan application:
- (i) The amount to be borrowed, the total dollar cost of the loan to the consumer if the loan is paid back on time, including the sum of the administrative fee and principal amount borrowed, the corresponding annual percentage rate, calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. 226.1), the periodic payment amount, the payment frequency, and the insufficient funds fee, if applicable.
- (ii) An explanation of whether, and under what circumstances, a borrower may exit a loan agreement.
- (G) The loan shall have a minimum principal amount upon origination of two hundred fifty dollars (\$250) and a maximum principal amount upon origination of two thousand five hundred dollars (\$2,500), and a term of not less than the following:
- (i) Ninety days for loans whose principal balance upon origination is less than five hundred dollars (\$500).
- (ii) One hundred twenty days for loans whose principal balance upon origination is at least five hundred dollars (\$500), but is less than one thousand five hundred dollars (\$1,500).
- (iii) One hundred eighty days for loans whose principal balance upon origination is at least one thousand five hundred dollars (\$1,500).
- (H) The loan shall not be refinanced.

(1) Neither the organization nor any of its wholly owned subsidiaries shall sell or assign unpaid debt to an independent party for collection before at least 90 has passed since the start of the delinquency.

(7) Prior to disbursement of loan proceeds, the organization shall either (A) offer a credit education program or seminar to the borrower that has been previously reviewed and approved by the commissioner for use in complying with this section, or (B) invite the borrower to a credit education program or seminar offered by an independent third party that has been previously reviewed and approved by the commissioner for use in complying with this section. A credit education program or seminar offered pursuant to this paragraph shall be provided at no cost to the borrower.

(8) The organization shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, upon acceptance as a data furnisher by that consumer reporting agency. For purposes of this section, a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis is one that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any organization that is accepted as a data furnisher after being granted an exemption by the commissioner pursuant to this subdivision shall report all borrower payment performance since its inception of lending under the program, as soon as practicable after its acceptance into the program, but in no event more than six months after its acceptance into the program.

(9) The organization shall underwrite each loan and shall ensure that a loan is not made if, through its underwriting, the organization determines that the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the organization, exceed 50 percent of the borrower's gross monthly household income except as specified in clause (iii) of subparagraph (D).

(A) The organization shall seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The organization shall verify that information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

(B) The organization shall also request from the borrower and include all information obtained from the borrower regarding outstanding deferred deposit transactions in the calculation of the borrower's outstanding debt obligations.

(C) The organization shall not be required to consider, for purposes of debt-to-income ratio evaluation, loans from friends or family.

(D) The organization shall also verify the borrower's household income that the organization relies on to determine the borrower's debt-to-income ratio using information from any of the following:

(i) Electronic means or services that provide reliable evidence of the borrower's actual income.

(ii) Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(iii) A signed statement from the borrower stating sources and amounts of income, if the borrower's actual income cannot be independently verified using electronic means or services, Internal Revenue Service forms, tax returns, payroll receipts, bank statements, or other third-party documents. If income is verified using a signed statement from a borrower, a loan shall not be made if the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit, exceed 25 percent of the borrower's gross monthly household income.

(10) The organization shall notify each borrower, at least two days prior to each payment due date, informing the borrower of the amount due and the payment due date. Notification may be provided by any means mutually acceptable to the borrower and the organization. A borrower shall have the right to opt out of this notification at any time, upon electronic or written request to the organization. The organization shall notify each borrower of this right prior to disbursing loan proceeds.

(11) Notwithstanding Sections 22311 to 22315, inclusive, no organization, in connection with, or incidental to, the facilitating of any loan made pursuant to this section, may offer, sell, or require a borrower to contract for "credit insurance" as defined in paragraph (1) of subdivision (a) of Section 22314 or insurance on tangible personal or real property of the type specified in Section 22313.

(12) No organization shall require, as a condition of making a loan, that a borrower waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the commissioner or any court or other public entity, or that the borrower agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by a borrower must be knowing, voluntary, and in writing, and expressly not made a condition of doing business with the organization. Any waiver that is required as a condition of doing business with the organization shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The organization has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not made a condition of the contract with the borrower.

(13) No organization shall refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the commissioner or any court or other public entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(14) This section shall not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute, after a claim or dispute

has arisen. Nothing in this section shall affect the enforceability or validity of any other provision of the contract.

(d) This division does not apply to a nonprofit organization that partners with an organization granted an exemption pursuant to subdivision (c) for the purpose of facilitating zero-interest, low-cost loans, provided that the requirements of paragraphs (6) to (14), inclusive, of subdivision (c), and the following additional conditions are met:

(1) The partnership of each exempt organization and each partnering organization shall be formalized through a written agreement that specifies the obligations of each party. Each written agreement shall contain a provision establishing that the partnering organization agrees to comply with the provisions of this section and any regulations that may be adopted by the commissioner pursuant to this section. Each such agreement shall be provided to the commissioner upon request.

(2) Each partnering organization shall meet the requirements for federal income tax exemption under Section 501(c)(3) of the Internal Revenue Code and shall be organized and operated exclusively for one or more of the purposes described in Section 501(c)(3) of the Internal Revenue Code.

(3) No part of the net earnings of the partnering organization shall inure to the benefit of a private shareholder or individual.

(4) Each exempt organization shall notify the commissioner within 30 days of entering into a written agreement with a partnering organization, on such form and in such manner as the commissioner may prescribe. At a minimum, this notification shall include the name of the partnering organization, the contact information for a person responsible for the lending activities facilitated by that partnering organization, and the address or addresses at which the organization facilitates lending activities.

(5) Upon a determination that a partnering organization has acted in violation of this section or any regulation adopted thereunder, the commissioner may disqualify that partnering organization from performing services under this section, bar that organization from performing services at one or more specific locations of that organization, terminate a written agreement between a partnering organization and an exempt organization, and, if the commissioner deems such action to be in the public interest, prohibit the use of that partnering organization by all organizations granted exemptions by the commissioner pursuant to subdivision (c).

(6) The exempt organization shall include information regarding the loans facilitated by the partnering organization in the annual report required pursuant to paragraph (5) of subdivision (c).

(e) The commissioner may examine each exempt organization and each partnering organization for compliance with the provisions of this section, upon reasonable notice to the party responsible for the lending activities facilitated by that organization. Any organization so examined shall make available to the commissioner or his or her representative all books and records requested by the commissioner related to the lending activities facilitated by that organization. The cost of any such examination shall be paid by the exempt organization.

(f) This section shall not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251. For

purposes of this subdivision, “bona fide principal amount” shall be determined in accordance with Section 22251.

(Added by Stats. 2014, Ch. 190, Sec. 1. Effective January 1, 2015.)

22067.

(a) On or before July 1 of each year, the commissioner shall post a report on the department’s Internet Web site summarizing the information described in subdivision (b). The information disclosed to the commissioner for the commissioner’s use in preparing the report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(b) The report required by this section shall specify the time period to which the report corresponds, and shall include, but not be limited to, the following for that time period:

(1) The number of organizations that applied for exemptions pursuant to subdivision (c) of Section 22066, and the number of organizations that entered into partnerships with exempt organizations in accordance with subdivision (d) of Section 22066.

(2) The number of organizations granted exemptions and the types of exemptions granted.

(3) The reason or reasons for denying applications for exemptions, if applicable. This information shall be provided in a manner that does not identify the entity or entities denied.

(4) The number of borrowers who applied for loans through exempt or partnering organizations, the number of borrowers granted loans facilitated by exempt or partnering organizations, the total amount loaned, and the distribution of loan lengths upon origination.

(5) The number of borrowers who obtained more than one loan through an exempt or partnering organization and the distribution of the number of loans per borrower.

(6) Of the number of borrowers who obtained more than one loan facilitated by an exempt or a partnering organization, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.

(7) The income distribution of borrowers upon loan origination, including the number of borrowers who obtained at least one loan and who resided in a low-to-moderate-income census tract at the time of their loan application.

(8) The number of borrowers who obtained loans facilitated by an exempt or a partnering organization for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the loan was obtained:

(A) Medical.

(B) Other emergency.

(C) Vehicle repair.

(D) Vehicle purchase.

(E) To pay bills.

(F) To consolidate debt.

(G) To build or repair credit history.

(H) To finance a purchase of goods or services other than a vehicle.

- (I) For other than personal, family, or household purposes.
- (J) Other.
- (9) The number of borrowers who self-report that they had a bank account at the time of their loan application, the number of borrowers who self-report that they had a bank account and used check-cashing services, and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.
- (10) The performance of loans under Section 22066, as reflected by all of the following:
- (A) The number and percentage of borrowers who experienced at least one late payment lasting between 7 and 29 days and who subsequently brought his or her loan current, and the distribution of principal loan amounts corresponding to those late payments.
- (B) The number and percentage of borrowers who experienced at least one late payment lasting between 30 and 59 days and who subsequently brought his or her loan current, and the distribution of principal loan amounts corresponding to those late payments.
- (C) The number and percentage of borrowers who experienced at least one late payment lasting 60 days or more and who subsequently brought his or her loan current, and the distribution of principal loan amounts corresponding to those late payments.
- (D) The number and percentage of borrowers who experienced at least one late payment of greater than seven days and who did not subsequently bring his or her loan current.
- (E) Among loans that were ever late for seven days or more, the average number of times borrowers experienced a late payment of seven days or more.
- (11) The number and types of violations of Section 22066 by exempt organizations, which were documented by the commissioner.
- (12) The number and types of violations of Section 22066 by partnering organizations, which were documented by the commissioner.
- (13) The number of times the commissioner suspended or revoked an exemption granted to an exempt organization pursuant to paragraph (4) of subdivision (c) of Section 22066 and the number of times a partnering organization was sanctioned by the commissioner pursuant to paragraph (5) of subdivision (d) of Section 22066.
- (14) The number of complaints received by the commissioner about an exempt organization or a partnering organization, and the nature of those complaints.
- (15) Recommendations, if any, for improving the program.
- (Added by Stats. 2014, Ch. 190, Sec. 2. Effective January 1, 2015.)*

ARTICLE 3. Licensing [22100 - 22112]

(Article 3 added by Stats. 1994, Ch. 1115, Sec. 2.)

22100.

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

(b) Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 20 (commencing with Section 50000), or has first obtained a license endorsement from the Commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

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

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

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

(f) An individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of this division and any rules promulgated by the commissioner under this chapter.

(g) A registered mortgage loan originator, as defined in subdivision (c) of Section 22013, is exempt from licensure under this section when he or she is employed by:

(1) A depository institution.

(2) A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency.

(3) An institution regulated by the Farm Credit Administration.

(Amended by Stats. 2012, Ch. 264, Sec. 4. Effective January 1, 2013.)

22101.

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

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

(c) This section shall not be construed to prevent a licensee from engaging in the business of a finance lender through a subsidiary corporation if the subsidiary corporation is licensed pursuant to this division.

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

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

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

(g) Notwithstanding any other law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. This section shall not require the commissioner to accept electronic records or electronic signatures.

(h) For purposes of this section, the following terms have the following meanings:

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

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

(B) A financial statement, reports, or advertising.

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

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

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

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

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

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

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

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

(Amended by Stats. 2014, Ch. 782, Sec. 7. Effective January 1, 2015.)

22101.5.

(a) The commissioner shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all finance lender and broker license candidates, as defined by subdivision (a) of Section 22101, for purposes of obtaining

information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

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

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

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

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 14. Effective October 11, 2009.)

22102.

(a) A finance lender or broker licensee seeking to engage in business at a new location shall submit an application for a branch office license to the commissioner at least 10 days before engaging in business at a new location and pay the fee required by Section 22103. The commissioner may require an applicant seeking to engage in business at a new location to submit its application, or parts thereof, through the Nationwide Mortgage Licensing System and Registry.

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

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

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

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

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 15. Effective October 11, 2009.)

22103.

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

(Amended by Stats. 2009, Ch. 160, Sec. 16. Effective October 11, 2009.)

22104.

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

(b) A licensed finance lender or broker, that employs one or more mortgage loan originators and that makes residential mortgage loans, shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(c) A licensed finance broker, that employs one or more mortgage loan originators and that arranges, but does not make, residential mortgage loans, shall continuously maintain a minimum net worth of at least fifty thousand dollars (\$50,000).

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

(Amended by Stats. 2010, Ch. 287, Sec. 6. Effective January 1, 2011.)

22105.

Upon the filing of an application pursuant to Section 22101 and the payment of the fees, the commissioner shall investigate the applicant and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any person responsible for the conduct of the applicant's lending activities in this state, if the applicant is a partnership. If the applicant is a corporation, trust, limited liability company, or association,

including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, managing members, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any person responsible for the conduct of the applicant's lending activities in this state. Upon the filing of an application pursuant to Section 22102 and the payment of the fees, the commissioner shall investigate the person responsible for the lending activity of the licensee at the new location described in the application. The investigation may be limited to information that was not included in prior applications filed pursuant to this division. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 22109, the commissioner shall issue and deliver a license to the applicant. For the purposes of this section, "principal officers" shall mean president, chief executive officer, treasurer, and chief financial officer, as may be applicable, and any other officer with direct responsibility for the conduct of the applicant's lending activities within the state. *(Amended by Stats. 2007, Ch. 101, Sec. 19. Effective January 1, 2008.)*

22105.1.

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

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

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

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

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

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

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

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

(e) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence

and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.

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

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

(Added by Stats. 2009, Ch. 160, Sec. 18. Effective October 11, 2009.)

22105.2.

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

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

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

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

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

(Added by Stats. 2009, Ch. 160, Sec. 19. Effective October 11, 2009.)

22105.3.

(a) Except as otherwise provided in Section 1512 of the SAFE Act, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and

Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

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

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

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

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

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

(Added by Stats. 2009, Ch. 160, Sec. 20. Effective October 11, 2009.)

22105.4.

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

(Added by Stats. 2009, Ch. 160, Sec. 21. Effective October 11, 2009.)

22106.

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

(b) An application for a license for a business location outside this state shall constitute an agreement by the applicant to do all of the following:

- (1) Make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state.
- (2) Pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during any investigation or examination made at the licensee's location outside this state.

A licensee located outside this state is not required to maintain books and records regarding licensed loans separate from those for other loans if licensed loans can be readily identified. *(Amended by Stats. 2009, Ch. 160, Sec. 22. Effective October 11, 2009.)*

22107.

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

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

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

(d) If a licensee fails to pay the assessment on or before the 31st day of October, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a finance lender or broker licensee and any mortgage loan originator licensee employed by the finance lender or broker shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

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

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry. *(Amended by Stats. 2010, Ch. 287, Sec. 7. Effective January 1, 2011.)*

22108.

(a) The commissioner may by rule require licensees to file, at the times that he or she may specify, the information that he or she may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

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

(Amended by Stats. 2009, Ch. 160, Sec. 23.5. Effective October 11, 2009.)

22109.

(a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a finance lender or broker license for any of the following reasons:

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

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

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

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

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 24. Effective October 11, 2009.)

22109.1.

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

- (1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.
- (2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.
(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).
- (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.
- (4) The applicant has completed the prelicensing education requirement described in Section 22109.2.
- (5) The applicant has passed a written test that meets the test requirement described in Section 22109.3.
- (6) The applicant is employed by, and subject to the supervision of, a finance lender or broker that has obtained a license from the commissioner pursuant to this division.
(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.
(Amended by Stats. 2011, Ch. 444, Sec. 3. Effective January 1, 2012.)

22109.2.

- (a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:
 - (1) Three hours of instruction on federal law and regulations.
 - (2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
 - (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
 - (4) Two hours of training related to relevant California law and regulations.
- (b) For purposes of subdivision (a), prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a prelicensing education course shall include review and approval of the course provider.

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

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

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

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

(Amended by Stats. 2014, Ch. 123, Sec. 1. Effective January 1, 2015.)

22109.3.

(a) An applicant for a mortgage loan originator license shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

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

(1) Ethics.

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

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

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

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

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

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

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

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

(Amended by Stats. 2014, Ch. 123, Sec. 2. Effective January 1, 2015.)

22109.4.

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

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

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

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

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

(c) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on December 31, except as provided in subdivision (h) of Section 22109.5. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

(Amended by Stats. 2010, Ch. 287, Sec. 9. Effective January 1, 2011.)

22109.5.

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

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

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

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

(4) One hour of training related to relevant California law and regulations.

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

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

- (d) Continuing education may be offered in a classroom, online, and by any other means approved by the Nationwide Mortgage Licensing System and Registry.
- (e) Except as provided in subdivision (i), a licensed mortgage loan originator:
- (1) May only receive credit for a continuing education course in the year in which the course is taken.
 - (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.
- (f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.
- (g) A person who has successfully completed continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be granted credit toward completion of continuing education requirements in California.
- (h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
- (i) A person meeting the requirements of paragraphs (1) and (3) of subdivision (b) of Section 22109.4 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.
- (Amended by Stats. 2014, Ch. 123, Sec. 3. Effective January 1, 2015.)*

22109.6.

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

- (a) Background information for the following:
- (1) Criminal history through fingerprint or other databases.
 - (2) Civil or administrative records.
 - (3) Credit history.
 - (4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.
- (b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.
- (c) The setting or resetting as necessary of renewal or reporting dates.
- (d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(Added by Stats. 2009, Ch. 160, Sec. 30. Effective October 11, 2009.)

22110.

The proceedings for a denial of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner has all the powers granted therein.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22111.

All money paid or collected under this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22112.

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

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

(c) The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

(Amended by Stats. 2010, Ch. 287, Sec. 10. Effective January 1, 2011.)

ARTICLE 4. Regulations [22150 - 22172]

(Article 4 added by Stats. 1994, Ch. 1115, Sec. 2.)

22150.

The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22151.

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

(b) A license is not transferable or assignable. A license issued to a partnership or a limited partnership is not transferred or assigned within the meaning of this section by the death, withdrawal, or admission of a partner, general partner, or limited partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

(Amended by Stats. 2009, Ch. 160, Sec. 31. Effective October 11, 2009.)

22152.

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

(Amended by Stats. 2009, Ch. 160, Sec. 32. Effective October 11, 2009.)

22153.

(a) If a finance lender or broker 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. The commissioner may require an applicant to submit its application to change its place of business through the Nationwide Mortgage Licensing System and Registry.

(b) 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 (a), or notice is not given at least 10 days prior to engaging in business at a new location, as required by Section 22102, the commissioner may assess a civil or administrative penalty on the licensee not to exceed five hundred dollars (\$500).
(Amended by Stats. 2009, Ch. 160, Sec. 33. Effective October 11, 2009.)

22154.

(a) No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the commissioner. The commissioner may authorize the other business through the Nationwide Mortgage Licensing System and Registry.

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

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

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 34. Effective October 11, 2009.)

22155.

No finance lender, broker, or mortgage loan originator licensee shall transact the business licensed or make any loan provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner's order, while effective, shall be deemed to amend the original license issued

pursuant to Section 22105 or 22109.1. Notwithstanding any provision of this section, a licensee may make any loan and engage in any other business provided for by this division, other than the business described in subdivision (b) of Section 22154, at a place other than the licensed location under either of the following conditions:

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 35. Effective October 11, 2009.)

22156.

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

(Amended by Stats. 2009, Ch. 160, Sec. 36. Effective October 11, 2009.)

22157.

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

(Amended by Stats. 2009, Ch. 160, Sec. 37. Effective October 11, 2009.)

22158.

Nothing contained in Sections 22156 and 22157 shall require the maintenance or preservation of original records, provided that any information requested by the commissioner can be furnished within 48 hours, excluding Saturdays, Sundays, and holidays as defined in Sections 6700 and 6701 of the Government Code.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22159.

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

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

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 38. Effective October 11, 2009.)

22159.5.

(a) The commissioner may, as he or she deems necessary, require licensees to provide reports concerning their residential mortgage loan servicing activities, including, but not limited to, information similar to that collected in connection with the Mortgage Servicers Survey, first published by the Department of Corporations in December 2007. The commissioner is additionally authorized to seek and accept information provided on a voluntary basis by residential mortgage loan servicers not subject to the commissioner's jurisdiction. The commissioner shall post only aggregated survey results on the department's Internet Web site, and shall note the number of loan servicers submitting data included in the aggregated totals and the estimated percentage of outstanding mortgage loans to Californians that are serviced by these loan servicers, to the extent information on the number of outstanding loans is available from a reliable source. Nothing in this section is intended to reduce or change the commissioner's authority to request and demand reports under Sections 22150 and 22159.

(b) For purposes of this section, "mortgage loan servicing activity" means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant

to the terms of a mortgage loan, and performing services relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

(Added by Stats. 2008, Ch. 277, Sec. 1. Effective January 1, 2009.)

22160.

The commissioner shall make and file annually with the Department of Corporations as a public record a composite of the annual reports and any comments on the reports that he or she deems to be in the public interest.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22161.

No person subject to this division shall do any of the following:

- (a) Make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering the loan.
- (b) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.
- (c) Commit an act in violation of Section 1695.13 of the Civil Code.
- (d) Engage in any act in violation of Section 17200 of the Business and Professions Code.
- (e) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party.
- (f) Commit an act that constitutes fraud or dishonest dealings.

(Amended by Stats. 2013, Ch. 243, Sec. 2. Effective January 1, 2014.)

22162.

No licensee shall place an advertisement disseminated primarily in this state for a loan unless the licensee discloses in the printed text of the advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22163.

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in the manner that the commissioner deems necessary to prevent misunderstanding by prospective borrowers.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22164.

If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans, the commissioner shall require that the rates, charges, or costs are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by the person, this fact shall be clearly indicated in the advertisement.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22165.

No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use.

(Amended by Stats. 2010, Ch. 640, Sec. 1. Effective January 1, 2011.)

22166.

The commissioner may require licensees to maintain a file of all advertising copy for a period of two years from the date of its use. The file shall be available to the commissioner upon request.

(Amended by Stats. 2010, Ch. 640, Sec. 2. Effective January 1, 2011.)

22167.

A licensed finance lender may act as a broker as defined in Section 22004 at its licensed place of business without obtaining an additional license as a broker under this division provided the licensee has notified the commissioner of the action in writing.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22168.

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

(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 Part 1 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter shall be set for hearing to commence within 30 days after 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 the 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 subdivision (a), the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under this division.

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

(Amended by Stats. 2009, Ch. 160, Sec. 39. Effective October 11, 2009.)

22169.

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

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

dishonesty, fraud, or deceit, 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 4.5 (commencing with Section 11400) 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 activities subject to licensure under the law.

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

(Amended by Stats. 2009, Ch. 160, Sec. 40. Effective October 11, 2009.)

22170.

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

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

(Amended by Stats. 2009, Ch. 160, Sec. 40.5. Effective October 11, 2009.)

22171.

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

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

(c) A finance lender or broker licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in

subdivision (a). A mortgage loan originator licensee shall adhere to policies and procedures developed by its employer in accordance with this division and applicable federal law and regulation.

(Amended by Stats. 2009, Ch. 160, Sec. 41. Effective October 11, 2009.)

22172.

(a) The commissioner may do one or more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2. Consumer Loans [22200 - 22470] *(Chapter 2 added by Stats. 1994, Ch. 1115, Sec. 2.)*

ARTICLE 1. Definitions [22200 - 22204]

(Article 1 added by Stats. 1994, Ch. 1115, Sec. 2.)

22200.

“Charges” include the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of a loan or forbearance of money, credit, goods, or things in action, or any other service rendered.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22201.

“Charges” include any profit or advantage of any kind that a licensee may contract for, collect, receive, or obtain by a collateral sale, purchase, or agreement, in connection with negotiating, arranging, making, or otherwise in connection with any loan.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22202.

“Charges” do not include any of the following:

(a) Commissions received as a licensed insurance agent or broker in connection with insurance written as provided in Section 22313.

(b) Amounts not in excess of the amounts specified in subdivision (c) of Section 3068 of the Civil Code paid to holders of possessory liens, imposed pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code, to release motor vehicles that secure loans subject to this division.

(c) Court costs, excluding attorney’s fees, incurred in a suit and recovered against a debtor who defaults on his or her loan.

(d) Fees paid to a licensee for the privilege of participating in an open-end credit program, which fees are to cover administrative costs and are imposed upon executing the open-end loan agreement and on annual renewal dates or anniversary dates thereafter.

(e) Amounts received by a licensee from a seller, from whom the borrower obtains money, goods, labor, or services on credit, in connection with a transaction under an open-end credit program that are paid or deducted from the loan proceeds paid to the seller at the direction of

the borrower and which are an obligation of the seller to the licensee for the privilege of allowing the seller to participate in the licensee's open-end credit program. Amounts received by a licensee from a seller pursuant to this subdivision may not exceed 6 percent of the loan proceeds paid to the seller at the direction of the borrower.

(f) Actual and necessary fees not exceeding five hundred dollars (\$500) paid in connection with the repossession of a motor vehicle to repossession agencies licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code provided that the licensee complies with Sections 22328 and 22329, and actual fees paid to a licensee in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(g) Moneys paid to, and commissions and benefits received by, a licensee for the sale of goods, services, or insurance, whether or not the sale is in connection with a loan, that the buyer by a separately signed authorization acknowledges is optional, if sale of the goods, services, or insurance has been authorized pursuant to Section 22154.

(Amended by Stats. 1998, Ch. 582, Sec. 3. Effective January 1, 1999.)

22203.

"Consumer loan" means a loan, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes. For purposes of determining whether a loan is a consumer loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower, or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes. Nothing in this section shall authorize the taking of real property as security, except as specified in Section 22330.

(Amended by Stats. 1999, Ch. 347, Sec. 1. Effective January 1, 2000.)

22204.

(a) In addition to the definition of consumer loan in Section 22203, a "consumer loan" also means a loan of a principal amount of less than five thousand dollars (\$5,000), the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes.

For purposes of determining whether a loan is or is not a consumer loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

(b) A consumer loan under this section is a loan secured in the manner provided for in this division if it is secured, in whole or in part, by any lien on, security interest in, assignment of, or

power of attorney relative to income arising from the operation of a business by the borrower, such as accounts, and chattel paper, including the right to payment for accounts or chattel paper sold by the borrower prior to or contemporaneously with the making of the loan.
(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

ARTICLE 2. Exemptions [22250 - 22251]

(Article 2 added by Stats. 1994, Ch. 1115, Sec. 2.)

22250.

(a) The following sections do not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22154, 22155, 22307, 22313, 22314, 22315, and 22752, and the sections enumerated in subdivision (b).

(b) The following sections do not apply to any loan of a bona fide principal amount of five thousand dollars (\$5,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22201, 22202, 22300, 22305, and 22306, subdivision (a) of Section 22307, and Sections 22309, 22320.5, 22322, 22323, 22325, 22326, 22327, 22334, 22400, and 22751.
(Amended by Stats. 1998, Ch. 104, Sec. 1. Effective January 1, 1999.)

22251.

Any section that refers to this section does not apply to any loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more if that provision is not used for the purpose of evading this division. In determining under Section 22250, 22303, or 22304 or any section that refers to this section whether a loan is a loan of a bona fide principal amount of the amount specified in that section or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the following principles apply:

(a) If a borrower applies for a loan in a bona fide principal amount of less than the specified amount and a loan to that borrower of a bona fide principal amount of the specified amount or more if made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the bona fide principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more and the regulatory ceiling

provisions shall be deemed to be used for the purpose of evading this division unless the loan complies with the other provisions of the section that includes the regulatory ceiling provisions.

(b) If a loan made by a licensed finance lender is in a bona fide principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the loan or the bona fides of the amount thereof or to indicate that the regulatory ceiling provisions are used for the purpose of evading this division.

(c) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the "bona fide principal amount" shall not be comprised of any charges or any other fees or recompense specified in Sections 22200, 22201 (including, but not limited to, amounts paid for insurance of the types specified in Sections 22313 and 22314), 22202, 22305, 22316, 22317, 22318, 22319, 22320, 22320.5, and 22336. Nothing in this subdivision shall be construed to prevent those specified charges, fees, and recompense that have been earned and remain unpaid in an existing loan from being considered as part of the bona fide principal amount of a new loan to refinance that existing loan, provided the new loan is not made for the purpose of circumventing a regulatory ceiling provision. This subdivision is intended to define the meaning of "bona fide principal amount" as used in this division solely for the purposes of determining whether the loan amount exceeds a regulatory ceiling, and is not intended to affect the meaning of "principal" for any other purpose.

(Amended by Stats. 1999, Ch. 347, Sec. 2. Effective January 1, 2000.)

ARTICLE 3. Loan Regulations [22300 - 22347]

(Article 3 added by Stats. 1994, Ch. 1115, Sec. 2.)

22300.

No licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is made.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22301.

(a) No licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature with respect to a loan of five thousand dollars (\$5,000) or more unless the loan is made.

(b) Notwithstanding subdivision (a), whenever a loan of five thousand dollars (\$5,000) or more is not consummated because of the borrower's failure to disclose outstanding liens or other information essential to making the loan or solely because of the borrower's failure to

complete the loan in accordance with the loan application, a licensee may charge, contract for, and receive an amount equal to the actual expenses incurred by the licensee in connection with the preparation for the loan.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22302.

(a) Section 1670.5 of the Civil Code applies to the provisions of a loan contract that is subject to this division.

(b) A loan found to be unconscionable pursuant to Section 1670.5 of the Civil Code shall be deemed to be in violation of this division and subject to the remedies specified in this division.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22303.

Every licensee who lends any sum of money may contract for and receive charges at a rate not exceeding the sum of the following:

(a) Two and one-half percent per month on that part of the unpaid principal balance of any loan up to, including, but not in excess of two hundred twenty-five dollars (\$225).

(b) Two percent per month on that portion of the unpaid principal balance in excess of two hundred twenty-five dollars (\$225) up to, including, but not in excess of nine hundred dollars (\$900).

(c) One and one-half percent per month on that part of the unpaid principal balance in excess of nine hundred dollars (\$900) up to, including, but not in excess of one thousand six hundred fifty dollars (\$1,650).

(d) One percent per month on any remainder of such unpaid balance in excess of one thousand six hundred fifty dollars (\$1,650).

This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22304.

As an alternative to the charges authorized by Section 22303, a licensee may contract for and receive charges at the greater of the following:

(a) A rate not exceeding 1.6 percent per month on the unpaid principal balance.

(b) A rate not exceeding five-sixths of 1 percent per month plus a percentage per month equal to one-twelfth of the annual rate prevailing on the 25th day of the second month of the

quarter preceding the quarter in which the loan is made, as established by the Federal Reserve Bank of San Francisco, on advances to member banks under Sections 13 and 13a of the Federal Reserve Act, as now in effect or hereafter from time to time amended, or if there is no single determinable rate for advances, the closest counterpart of this rate as shall be determined by the Commissioner of Financial Institutions. Charges shall be calculated on the unpaid principal balance.

(c) This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251.

(Amended by Stats. 2006, Ch. 538, Sec. 176. Effective January 1, 2007.)

22305.

In addition to the charges authorized by Section 22303 or 22304, a licensee may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, with respect to a loan of a bona fide principal amount of not more than two thousand five hundred dollars (\$2,500) at a rate not in excess of 5 percent of the principal amount (exclusive of the administrative fee) or fifty dollars (\$50), whichever is less, and with respect to a loan of a bona fide principal amount in excess of two thousand five hundred dollars (\$2,500), at an amount not to exceed seventy-five dollars (\$75). No administrative fee may be contracted for or received in connection with the refinancing of a loan unless at least one year has elapsed since the receipt of a previous administrative fee paid by the borrower. Only one administrative fee may be contracted for or received until the loan has been repaid in full. For purposes of this section, "bona fide principal amount" shall be determined in accordance with Section 22251.

(Amended by Stats. 1999, Ch. 347, Sec. 3. Effective January 1, 2000.)

22306.

No amount in excess of that allowed by this article shall be directly or indirectly charged, contracted for, or received by any person, and the total charges of the finance lender and broker and any other person in the aggregate shall not exceed the maximum rate provided for in this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22307.

(a) Except as provided in Section 22305 and Article 4 (commencing with Section 22400), all charges on loans made under this division shall be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof, and shall be so expressed in every obligation signed by the borrower. The charges on loans shall be computed on the basis of the

number of days actually elapsed. For the purpose of these computations, a month is any period of 30 consecutive days.

(b) The loan contract shall provide for payment of the aggregate amount contracted to be paid in substantially equal periodical installments, the first of which shall be due not less than 15 days nor more than one month and 15 days from the date the loan is made. This subdivision shall not apply to a loan made to a graduate student at an accredited college or university while the student is actively pursuing a study program leading to a postbaccalaureate degree, or to a student loan made by an eligible lender under the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.), or to a student loan made pursuant to the Public Health Service Act, as amended (42 U.S.C. Sec. 294 et seq.).

(c) This section shall not apply to open-end loans.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22308.

Notwithstanding Section 22307, a licensee may contract for and receive charges on the unpaid principal balance at a single annual percentage rate, applied on the basis of the number of days actually elapsed, if the annual rate would produce a finance charge at the maturity of the contract not in excess of the finance charge resulting from the application of the graduated rates specified in Section 22303, when the loan is paid according to its terms, and charges are computed on the basis that a month is any period of 30 consecutive days, as provided in Section 22307; provided, however, that if prepayment in full occurs on or before the third installment date, all charges shall be recomputed as a percentage per month of the unpaid principal balance or portions thereof, based on the number of days actually elapsed.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22309.

Except as provided in Section 22305 and Article 4 (commencing with Section 22400), no charges on loans made pursuant to this division shall be paid, deducted, or received in advance, or compounded. However, if part or all of the consideration for a new loan contract is the unpaid balance of a prior loan, the principal amount payable under the new loan contract may include any unpaid interest that has accrued on the prior loan. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in Section 22400. At the time of making the loan, the licensee shall deliver to the borrower, or, at the direction of the borrower, deliver to another person, an amount equal to the face value of the loan and the note evidencing the loan.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22310.

(a) Except for a rebate or refund pursuant to any administrative, civil, or criminal action, or any act of the commissioner, a rebate or refund required to be made upon payment in full of a loan pursuant to this division need not be made if the aggregate of all rebates or refunds required in connection with a loan is less than one dollar (\$1).

(b) No licensee shall contract for or receive any payment required in connection with a loan for the purpose of avoiding a rebate or refund of less than one dollar (\$1).

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22311.

No person in connection with or incidental to the making of any loan regulated by this division may require the borrower to contract for purchase, or agree to purchase, any other thing in connection with the loan. A policy of insurance of the type specified in Section 22313 and credit life and disability insurance is not prohibited by this section. A policy of insurance of the type defined by subdivision (a) of Section 12640.02 of the Insurance Code shall not be deemed to be a collateral sale, purchase, or agreement within the terms of this section or of Section 22201 or 22312.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22312.

No person in connection with or incidental to the making of a loan shall require the borrower to enter into any collateral sales agreements or contracts, other than the contract of pledge, assignment, or mortgage or personal property, or if otherwise permitted by this division, the deed of trust, mortgage, or lien on real property, by the borrower to the lender as security for the repayment of the loan and charges on the loan. Insurance of the type specified in Section 22313, credit life insurance, and credit disability insurance are not prohibited by this section.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22313.

Insurance on tangible personal or real property offered as security shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22201, 22311, or 22312, when all the following requirements are met:

(a) The insurance is sold at standard rates through licensed insurance brokers or agents.

(b) The policy is written to cover the property that is offered as security for a loan.

- (c) The property is reasonably insured against loss for a reasonable term, which may be up to the term of the loan.
- (d) The policy relating to personal property is made payable to the borrower or any member of his or her family even though the customary mortgagee clause is attached or the mortgagee is a coassured.
- (e) Except in the case of purchase money encumbrances, the amount of title insurance shall not exceed the principal amount of the loan that is secured by a deed of trust, mortgage, or lien on the real property that is the subject of the policy of title insurance.
- (f) The policy of title insurance insures the lender or is made payable jointly to the lender and the borrower as their interests may appear.
- (g) Title insurance is placed through a title insurance company, duly authorized to do business in the state in which the real property is located, at rates comparable to rates being used by other title insurance companies duly authorized to do business in that state.
- (h) Title insurance is placed in connection with the renewal or extension of a loan only when the additional cash advance is at least one thousand dollars (\$1,000).
- This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans as determined in accordance with Section 22251.
- (Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)*

22314.

- (a) Credit insurance shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22201, 22311, or 22312 when the insurance is provided in accordance with the provisions of the Insurance Code and this section. As used in this division:
- (1) "Credit insurance" means credit life, disability, and loss-of-income insurance, or any combination of these coverages.
- (2) "Credit life insurance" and "credit disability insurance" have the same meanings as defined in Section 779.2 of the Insurance Code.
- (3) "Credit loss-of-income insurance" means insurance issued to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed, as defined in the policy.
- (b) A licensee may provide credit insurance with the borrower's consent, the form to be approved by the Insurance Commissioner, and a copy, together with evidence of its approval by the Insurance Commissioner, and a copy of the schedule of rates together with evidence of its approval by the Insurance Commissioner, to be filed with the commissioner prior to the offer or sale of the credit insurance and in an amount not in excess of the amount of the indebtedness, and, with respect to credit life or disability insurance, may collect from the borrower an amount not in excess of that permitted by or pursuant to Section 779.36 of the Insurance Code.

(c) If the loan is prepaid in full by cash, a new loan, refinancing, or otherwise (except by that insurance) before the final installment date, the borrower shall receive a rebate of that amount computed in accordance with the formula approved by the Insurance Commissioner pursuant to Section 779.14 of the Insurance Code.

(d) When charges for the loan are precomputed in accordance with Section 22400, any permitted deferment charge may be computed on the combined total of the precomputed charge and the credit insurance charge. Only one deferment charge may be collected in connection with any loan contract, irrespective of the number of borrowers, and only one borrower need be insured. The amount of the deferment charge may be deducted from the principal of the loan.

(e) If life or disability insurance is provided, and if the insured borrower dies or becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan, excluding unearned charges, outstanding on the date of death, or all amounts that become due on the loan during the period of disability, as the case may be, without any exception, reservation, or limitation, subject, however, to the provisions of Section 22315.

(f) Any credit insurance provided shall be in force as soon as the loan is made. A licensee shall not require credit insurance as a condition of making a loan.

(g) If a borrower procures credit insurance by or through a licensee, the statement required by Section 22338 shall disclose the cost of the credit insurance to the borrower, and the licensee shall deliver or cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. In the event a licensee provides credit disability or loss-of-income insurance pursuant to this division, the licensee shall also deliver an understandable written statement to the borrower detailing the conditions under which the borrower will be entitled to make a claim under the insurance policy and the procedure to be followed in making the claim. This statement shall be first approved by the Insurance Commissioner.

(h) The amount charged to the borrower for credit life or disability insurance shall not exceed the amount established by or pursuant to Section 779.36 of the Insurance Code.

(i) Nothing in this article shall prevent a licensee from selling insurance as other business if authorized by Section 22154.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans as determined in accordance with Section 22251.

(Amended by Stats. 1996, Ch. 107, Sec. 1. Effective January 1, 1997.)

22315.

(a) Credit disability insurance written pursuant to Section 22314 shall not provide indemnity against the risk that the borrower will become disabled for a period of less than 14 days. The insurance may provide indemnity for any single period of continuous disability of 14 days or longer, after which the risk may become compensable. The insurance may be offered with

retroactive coverage to an earlier date based upon the disability having continued for a period stated in the policy, but if insurance with retroactive coverage is offered, it shall also be offered without retroactive coverage, and the premium rate for each coverage shall be separately stated in writing to the borrower.

(b) If insurance with retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is disabled, provided that the insured is continuously disabled during the waiting period set forth in the policy. If insurance without retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is disabled, after first excluding the elimination period set forth in the policy. For the purpose of this subdivision, a month is any period of 30 consecutive days.

(c) Credit disability insurance, if made available by a licensee, shall be available on a monthly or annual premium basis, and the premium by the month shall not exceed a pro rata relationship to the annual premium. Credit disability insurance need not be offered for a period less than the term of the loan to which it is applicable, and no credit disability insurance shall be written for a period in excess of the term of the loan to which it is applicable.

(d) The monthly disability benefit payable with respect to an open-end loan shall not exceed the monthly payment computed pursuant to Section 22453 on the outstanding balance at the time disability is incurred.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, as determined in accordance with Section 22251.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22316.

A licensee may collect the cost of a lot book report purchased in lieu of the title insurance provided for in Section 22313. The cost is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22317.

On any loan made that is secured by real property, an appraisal fee not to exceed the actual cost of the appraisal may be charged by the licensee if a written appraisal is provided to the licensee by a qualified appraiser. Only one fee for appraising the same real property may be collected unless the borrower has obtained a new or additional loan and more than one year has elapsed since the prior appraisal. The fee is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22317.2.

(a) A licensee may collect a fee for use of an automated valuation model result prepared by a third party not to exceed the actual cost paid to the third party for a written automated valuation model result in lieu of the appraisal provided for in Section 22317. The borrower shall not be charged for both an automated valuation model result and an appraisal as defined in Section 22317 for the same property in a single transaction. Only one fee for providing an automated valuation model result or an appraisal for the same real property may be collected unless the borrower has obtained a new or additional loan and more than one year has elapsed since the prior delivery of an automated valuation model result or an appraisal. However, if a fee for an automated valuation model result has been paid, an appraisal fee minus the amount that has been paid by the borrower for the automated valuation model result may be charged for an appraisal for the same real property within one year if the borrower has obtained a new or additional loan. The fee is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.

(b) A licensee in a loan transaction secured by real property shall provide notice as described in this section to a borrower of the borrower's right to receive a copy of the automated valuation model result, provided he or she has paid a fee for the automated valuation model result. A borrower's written request for a copy of an automated valuation model result shall be received by the licensee no later than 90 days after (1) the licensee has provided notice of the action taken on the application, including a notice of incompleteness, or (2) the application has been withdrawn.

(c) The licensee shall mail or deliver a copy of an automated valuation model result within 15 days after receiving a written request from the borrower, or within 15 days after receiving the automated valuation model result, whichever occurs later.

(d) Where the loan is proposed to be secured by real property, the notice of the borrower's right to a copy of the automated valuation model result shall be given in at least 10-point boldface type, as a separate document in a form that the borrower may retain, and no later than 15 days after the licensee receives the written application. The notice shall specify that the borrower's request for the automated valuation model result must be in writing and must be received by the licensee no later than 90 days after the licensee provides notice of the action taken on the application or a notice of incompleteness, or in the case of a withdrawn application, 90 days after the withdrawal. The notice shall also include the following statement: "An automated valuation model is not an appraisal. It is a computerized property valuation system that is used to derive a real property value." An address to which the request should be sent shall be specified in the notice. Release of the automated valuation model result to the borrower may be conditioned upon payment of the fee.

(e) This section does not apply to automated valuation model results obtained by licensees on property owned by the licensee, nor to automated valuation model results obtained by the licensee in anticipation of modifying any existing loan agreement if the licensee does not charge for the use of the automated valuation model result.

(f) For purposes of this section, an "automated valuation model" is a computerized property valuation system that is used to derive a real property value.

(g) Nothing in this section authorizes the use of an automated valuation model result in lieu of an appraisal that is required under state or federal law.

(Added by Stats. 2006, Ch. 356, Sec. 1. Effective January 1, 2007.)

22317.5.

On any loan secured by real property, a licensee may not do either of the following:

(a) Fail to disburse funds in accordance with a commitment to make a loan that is accepted by the applicant.

(b) Intentionally delay the closing of a loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(Added by Stats. 2004, Ch. 940, Sec. 4. Effective January 1, 2005.)

22318.

On any loan made that is secured by real property, an escrow fee of a reasonable amount may be charged. The fee shall be considered reasonable when paid to a company licensed to do business under the Escrow Law (Division 6 (commencing with Section 17000)), or any person exempted by the Escrow Law, provided that the fees are comparable to fees charged by escrow companies authorized to do business in this state. The fee is not included in charges defined in this division in determining the applicable maximum charges that may be made under this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22319.

On any loan that is secured by real property, the fee to be paid to the trustee for reconveyance of the trust deed may be collected by the licensee for transmittal to the trustee. The fee is not included in charges defined in this division or in determining the applicable maximum charges that may be made under this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22320.

With respect to a loan under this division, a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft may be charged and collected by the licensee. The fee is not included in charges defined in this division or in determining the applicable maximum charges that may be made under this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22320.5.

(a) A licensee may contract for and receive a delinquency fee not in excess of one of the following amounts:

(1) For a period in default of not less than 10 days, an amount not in excess of ten dollars (\$10).

(2) For a period in default of not less than 15 days, an amount not in excess of fifteen dollars (\$15).

(b) The delinquency fee may not be collected more than once for the same default and may be collected at the time of the default or at any time thereafter. If the delinquency fee is deducted from any payment received after default occurs, and the deduction results in the default of a subsequent installment, no fee may be collected for the resulting default. The delinquency fee under this section is not included in charges defined in this division or in determining applicable maximum charges that may be made under this article.

(c) For open-end loans made under Article 5 (commencing with Section 22450), a licensee shall not collect or receive the delinquency fee set forth in subdivision (a) unless there is a minimum of 20 days, inclusive, between the monthly billing date and the date upon which the minimum payment is due, exclusive of the applicable grace period provided in subdivision (a).

(d) This section shall not apply to precomputed loans as described in Section 22400.

(Added by Stats. 1998, Ch. 104, Sec. 2. Effective January 1, 1999.)

22321.

If credit loss-of-income insurance is provided pursuant to this division, it shall be subject to the following conditions:

(a) The insurance shall provide indemnity in accordance with the terms of the policy after any single period of continuous unemployment of 45 days or less as determined by the policy, after which benefits shall commence. The insurance may be offered with retroactive coverage to an earlier date based upon unemployment having continued for the period stated in the policy.

(b) The statement required by Section 22337 shall include disclosure of the term of the coverage, the conditions of coverage, the benefits to be paid, and the exclusions from coverage.

(c) The borrower shall sign a certificate of voluntary acceptance of any credit loss-of-income insurance purchased. The certificate shall state in boldface type that is larger than the type used in the loan contract that purchase of the insurance is not a necessary condition of receiving the loan, and that the insurance may be canceled by the borrower at any time within 15 days after it goes into effect. If the borrower cancels the insurance within 15 days, a full refund shall be made of the premium paid.

(d) The minimum benefit shall be payment up to the agreed amount on not less than four benefit payments, as stated in the policy, which accrue during a covered period of unemployment, except that during the first 60 days after inception of the policy, the minimum benefit may be payment up to the agreed amount of one-half the number of benefit payments,

as stated in the policy, which accrue during a covered period of unemployment. The maximum benefits shall be established in the contract of insurance.

(e) If combination credit disability and credit loss-of-income coverage is offered, credit disability and credit loss-of-income coverage shall also be offered separately.

(f) Benefits may not be denied because the insured cannot establish a valid claim for unemployment compensation benefits under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code solely because the former employer was not required to contribute to the State Unemployment Fund.

(g) If insurance with retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is unemployed, provided that the insured is continuously unemployed during the waiting period set forth in the policy. If insurance without retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is unemployed, after first excluding the elimination period set forth in the policy. For the purpose of this subdivision, a month is any period of 30 consecutive days.

(h) When unemployment continues for a number of months equal to or greater than the maximum number of benefit payments stated in the policy, the final payment shall be equal to the difference between a benefit payment and the initial prorated payment.

(i) As used in this section, "benefit payment" means payment of an amount equal to a loan repayment installment or a maximum amount established in the contract of insurance, whichever is less.

(j) The minimum benefit payment offered may not be less than the amount of a loan repayment installment unless the borrower or borrowers have two or more sources of income. If the maximum benefit payment offered is less than the amount of a loan repayment installment, the borrower shall also be offered coverage in which the maximum benefit payment is equal to the amount of a loan repayment installment.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans as determined in accordance with Section 22251.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22322.

A loan lawfully made outside the state may be enforced in this state as to the unpaid principal balance of the loan together with the interest, consideration, brokerage, and all other charges, to the extent of but not to exceed the unpaid principal balance and the aggregate amount of interest, consideration, brokerage, and all other charges permitted by this division in connection with a loan of the same amount made within this state.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22323.

Any person who collects or attempts to collect in this state the unpaid principal balance of a loan made outside the state and a greater aggregate amount of interest, consideration, brokerage, and all other charges in connection with the loan than is permitted by this division in connection with a loan of the same amount made within this state, is subject to the provisions of this division.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22324.

Any person who contracts for or negotiates in this state a loan to be made outside the state for the purpose of evading or avoiding the provisions of this division is subject to the provisions of this division.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22325.

Every licensee shall display prominently in each licensed place of business a full and accurate schedule of the charges to be made and the method of computing the charges. The schedule is subject to the approval of the commissioner.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22326.

No person, except as authorized by this division, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he or she were not a licensee hereunder, upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit. This section applies to any person, who by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than is authorized by this division for any loan, use, or forbearance of money, goods, or things in action or for any loan, use, or sale of credit.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22327.

No licensee shall knowingly induce any borrower to split up or divide any loan with any other licensee. No licensee shall induce or permit any borrower to be or to become obligated directly or indirectly, or both, under more than one contract of loan at the same time with the same licensee for the purpose or with the result of obtaining a higher rate of charge than would otherwise be permitted by this article, except as otherwise required by the federal Equal Credit Opportunity Act (15 U.S.C. Sec. 1691 et seq.; P.L. 93-495) and Regulation B promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 202 et seq.). For the purpose of this section, "borrower" includes any husband and wife, whether jointly or severally obligated. *(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)*

22328.

(a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) Any provision in any loan contract to the contrary notwithstanding, at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle must be given to all persons liable on the loan. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the persons liable on the loan. Except as otherwise provided in Section 2983.8 of the Civil Code, those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following:

(1) States that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the loan note until the expiration of 15 days from the date of giving or mailing the notice, provides an itemization of the loan balance and of any costs and fees authorized by this division, and states the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date of the notice.

(2) States either that there is a conditional right to reinstate the loan until the expiration of 15 days from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no right of reinstatement and provides a statement of reasons therefor.

(3) States that, upon written request, the licensee shall extend for an additional 10 days the redemption period or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. The licensee shall provide the proper form for applying for these extensions with the substance of the form being limited to the extension request, spaces for the requesting party to sign and date the form, and instructions that it must be personally served or sent by certified or registered mail, return receipt requested, to a person or office and address designated by the licensee and received before the expiration of the initial redemption and reinstatement periods.

(4) Discloses the place at which the motor vehicle will be returned to the persons liable on the loan upon redemption or reinstatement.

(5) Designates the name and address of the person or office to whom payment shall be made.

(6) States the licensee's intent to dispose of the motor vehicle upon the expiration of 15 days from the date of giving or mailing the notice, or if by mail and either the place of deposit in the mail or the place of address is outside of this state, the period shall be 20 days instead of 15 days, and further, that upon written request to extend the redemption period and any applicable reinstatement period for 10 days, the licensee shall, without further notice, extend the period accordingly.

(7) Informs the persons liable on the loan that, upon written request, the licensee shall furnish a written accounting regarding the disposition of the motor vehicle as provided for in subdivision (c). The licensee shall advise them that the request must be personally served or sent by first-class mail, postage prepaid, or certified mail, return receipt requested, to a person or office and address designated by the licensee.

(8) Includes a notice, in at least 10-point bold type if the notice is printed, reading as follows: "NOTICE: YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE LOAN BALANCE AND ANY OTHER AMOUNTS DUE."

(c) Unless automatically provided to the borrower within 45 days after the disposition of the motor vehicle, the licensee shall provide a written accounting regarding the disposition to any person liable on the loan within 45 days after their written request, if the request is made within one year after the disposition. The accounting shall itemize:

(1) The gross proceeds of the disposition.

(2) The reasonable and necessary costs and fees authorized by this division incurred in repossessing the motor vehicle.

(3) The satisfaction of indebtedness secured by any subordinate lien or encumbrance on the motor vehicle if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the licensee, the holder of a subordinate lien or encumbrance shall seasonably furnish reasonable proof of its interest, and unless it does so, the seller or holder need not comply with its demand.

(d) In all sales that result in a surplus, the licensee shall furnish an accounting as provided in subdivision (c) whether or not requested by the borrower. The surplus shall be returned to the borrower within 45 days after the sale is conducted.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22329.

(a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) In the absence of default in the performance of any of the borrower's obligations under the loan, the licensee may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(c) If, after default by the borrower, the licensee repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the loan shall have a right to reinstate the loan and the licensee shall not accelerate the maturity of any part or all of the loan prior to the expiration of the right to reinstate, unless the licensee reasonably and in good faith determines that:

(1) The borrower or any other person liable on the loan by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

(2) The borrower or any other person liable on the loan has concealed the motor vehicle or removed it from the state in order to avoid repossession.

(3) The borrower or any other person liable on the loan has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has or may become substantially impaired in value.

(d) Exercise of the right to reinstate the loan shall be limited to once in any 12-month period and twice during the term of the loan.

(e) The provisions of this subdivision shall govern the method by which a loan shall be reinstated with respect to curing events of default that were grounds for repossession or that occurred subsequent to repossession.

(1) Where the default is the result of the borrower's failure to make any payment due under the loan, the borrower or any other person liable on the loan shall make the defaulted payments and pay any applicable delinquency charges.

(2) Where the default is the result of the borrower's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the borrower or any person liable on the loan shall either satisfy all the encumbrances and liens or, in the event the licensee satisfies the encumbrances and liens, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(3) Where the default is the result of the borrower's failure to keep and maintain insurance on the motor vehicle, the borrower or any other person liable on the loan shall either obtain the insurance or, in the event the licensee has obtained the insurance, the borrower or any other person liable on the loan shall reimburse the licensee for premiums paid and all reasonable costs and expenses incurred therefor.

(4) Where the default is the result of the borrower's failure to perform any other obligation under the loan, unless the licensee has made a good faith determination that the default is so substantial as to be incurable, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(5) Additionally, the borrower or any other person liable on the loan shall reimburse the licensee for actual and necessary fees in an amount not exceeding the amount specified in subdivision (f) of Section 22202 paid in connection with the repossession of a motor vehicle to a repossession agency licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, and actual fees in conformity with Sections

26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(f) If the licensee denies the right to reinstatement under subdivision (c) or paragraph (4) of subdivision (e), the licensee shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the licensee fails to sustain the burden of proof, the licensee shall not be entitled to a deficiency.

(Amended by Stats. 1998, Ch. 582, Sec. 4. Effective January 1, 1999.)

22329.5.

A licensee, or the agent of a licensee, that has received a notice pursuant to Section 7507.6 of the Business and Professions Code, shall not make a subsequent assignment to skip trace, locate, or repossess the vehicle without simultaneously, and in the same manner by which the assignment is given, advising the assignee of the assignment of the information contained in the notice. As used in this section, "assignment" has the same meaning set forth in Section 7500.1 of the Business and Professions Code.

(Added by Stats. 2007, Ch. 192, Sec. 8. Effective September 7, 2007.)

22330.

No licensee shall take a deed of trust, mortgage, or lien upon real property as security for any loan made under this division, except any lien as is created by law upon the recording of an abstract of judgment. This section shall not apply to any loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22251.

(Amended by Stats. 1999, Ch. 347, Sec. 4. Effective January 1, 2000.)

22331.

No licensee shall take any confession of judgment or any power of attorney, except a power of attorney taken to effectuate the transfer of the ownership of any motor vehicle or mobilehome at the time of making the loan.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22332.

No licensee shall take any note or promise to pay that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Consumer Financial Protection Bureau.

(Amended by Stats. 2014, Ch. 64, Sec. 18. Effective January 1, 2015.)

22333.

No licensee shall take any instrument in which blanks are left to be filled in after execution. *(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)*

22334.

No licensee shall enter into any contract for a loan that provides for a scheduled repayment of principal over more than the maximum terms set forth below opposite the respective size of loans.

Principal amount of loan	Maximum term
Less than \$500	24 months and 15 days
\$500 but less than \$1,500	36 months and 15 days
\$1,500 but less than \$3,000	48 months and 15 days
\$3,000 but less than \$5,000	60 months and 15 days

This section does not apply to open-end loans, or to a student loan made by an eligible lender under the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.), or to a student loan made pursuant to the Public Health Service Act, as amended (42 U.S.C. Sec. 294 et seq.).

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22335.

The payment by any person in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is, for the purposes of regulation under this division, a loan secured by the assignment. The amount by which the assigned compensation exceeds the amount of the consideration actually paid is interest and charges upon or for the loan, calculated from the date of payment to the date the compensation is payable.

This section shall not be construed as modifying or affecting existing statutes governing wage assignments in the state, or as authorizing those assignments.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22336.

This article does not prohibit any licensee from contracting for, collecting, or receiving the following:

(a) The statutory fee paid by the licensee to any public officer for acknowledging, filing, recording, or releasing in any public office any instrument securing the loan or executed in connection with the loan.

(b) Premiums paid by the licensee of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

These amounts are not included in determining the maximum charges which may be made under this article.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22337.

Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Consumer Financial Protection Bureau (12 C.F.R. 1026).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of three years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel or plainly mark "paid" and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, or an optical image reproduction thereof, except those

documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee, or original documents otherwise required by law. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Sections 9512 and 9513 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9501 of the Commercial Code.

For purposes of this subdivision, an optical image reproduction shall meet all of the following requirements:

(1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, trust deed, mortgage, security agreement, assignment or order shall be stamped or printed on the optical image reproduction.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

(Amended by Stats. 2014, Ch. 64, Sec. 19. Effective January 1, 2015.)

22338.

Each licensed broker shall:

(a) Deliver to the borrower, or any one thereof, at the time the final negotiation or arrangement is made, a statement showing in clear and distinct terms the name, address, and license number of the broker and the finance lender. The statement shall show the date, amount, and terms of the agreement with the broker, and all amounts paid or to be paid to the broker and to any person other than the finance lender.

(b) Deliver to the finance lender making the loan a copy of the statement referred to and described in subdivision (a).

(c) Deliver to the person making any payment to the broker to be retained by the broker, a plain and complete receipt for each payment made, at the time it is made, showing the total amount received, and identifying the brokerage agreement and the loan contract upon which the payment is applied. If the payment is made by a person other than the finance lender, a copy of the receipt shall be delivered to the finance lender.

(d) When the borrower pays the loan in full, ensure that the finance lender fully complies with subdivision (e) of Section 22337.

(e) Deliver to the potential borrower or borrowers, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the broker and finance lender.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22339.

Nothing contained in this article shall be construed to deny to any licensee hereunder the right of taking and using a security agreement that, in addition to securing an original obligation, may secure the repayment of sums that may be advanced to, or expenditures that may be made at the direction of, the borrower subsequent to the execution of the security agreement and prior to the satisfaction thereof.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22340.

(a) A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

(b) For the purpose of this section, "institutional investor" means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

(2) A bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, residential mortgage lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

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

(4) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however,

that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.

(5) A syndication or other combination of any of the foregoing that is organized to purchase the promissory note.

(6) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of undivided interests in, the right to receive payments from, or that are payable primarily from, a pool of financial assets held by the trust or business entity if all of the following apply:

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

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

(i) Interest bearing obligations.

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

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancements for these assets.

(C) The interests will be either of the following:

(i) Rated investment grade by Standard & Poor's Corporation or Moody's Investors Service, Inc.

"Investment grade" means that the securities will be rated by Standard & Poor's Corporation as AAA, AA, A, or BBB, or by Moody's Investor Service, Inc., as Aaa, Aa, A, or Baa, including a rating with a "+" or "-" designation or other variations that occur within these ratings.

(ii) Sold to an institutional investor as otherwise defined in this section.

(D) The offer and sale of the securities is qualified under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or is registered under federal securities laws, or is exempt from qualification or registration.

(c) In the absence of agreement to the contrary by the licensee and the institutional investor, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

(Amended by Stats. 1996, Ch. 672, Sec. 1. Effective January 1, 1997.)

22340.1.

(a) A licensee that is a finance lender may sell to (1) an institutional lender, or (2) an institutional investor described in paragraph (6) of subdivision (b) of Section 22340, promissory notes evidencing the obligation to repay federally related mortgage loans, as defined in Section 1024.2 of Title 12 of the Code of Federal Regulations, purchased from and made by an institutional lender, and may make agreements for the collection of payments and performance of services with respect to those notes. For purposes of this section, "institutional lender" means any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company or residential mortgage lender doing business under the authority of and in accordance with a license, certificate or charter issued by the United States or this state.

(b) In the absence of agreement to the contrary by the licensee and the institutional investor or institutional lender, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

(Amended by Stats. 2014, Ch. 64, Sec. 20. Effective January 1, 2015.)

22341.

(a) No licensee may make a loan to refinance a retail installment contract subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code, that is held by the licensee, its subsidiaries, or affiliates, unless all of the following conditions are met:

(1) The buyer has been making installment payments required by the retail installment contract for a period of not less than 90 days. The retail installment contract has a term of not less than 180 days and does not provide for any scheduled installment that is more than twice the amount of any other scheduled installment.

(2) The loan provides for additional proceeds other than for insurance in an amount not less than the outstanding principal balance of the retail installment contract and provides for payment in full of the retail installment contract.

(3) The licensee shall not take a security interest in real property that is the principal residence of the borrower unless the loan has a principal amount of five thousand dollars (\$5,000) or more and the following notice written in the same language, for example, Spanish, as used in the loan documents, is incorporated into the statement used to comply with Section 22338:

“WARNING TO BORROWER: IF YOU ACCEPT THIS LOAN YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT AS REQUIRED BY THIS LOAN.”

This notice shall be printed in not less than 14-point bold type, shall be set apart from the rest of the statement by a border, and shall appear directly above a signature block which shall be signed by the borrower. A security interest described in this paragraph that is taken without prior notice and the borrower’s signature, as required by this paragraph, shall be void and unenforceable.

(4) The licensee shall not sell, attempt to sell, or agree to sell any goods or services to the borrower, other than credit insurance as defined in Section 22314 and insurance required by the licensee to protect its security interest, until the loan has been in effect for at least 30 days. The amount of insurance required by the licensee to protect its security interest shall not exceed the lesser of the principal amount of the loan or the replacement value of the security as determined by the insurer.

(5) A licensee that is an assignee of the retail installment contract shall continue to be subject under the loan to all equities and defenses of the borrower against the seller arising out of the sale, notwithstanding an agreement to the contrary.

(6) The loan shall not provide for any scheduled installment that is more than twice the amount of any other scheduled installment. This paragraph does not apply to a loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more.

(7) If a loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more provides for any scheduled installment that is more than twice the amount of any other scheduled installment, the loan shall contain the following provision:

“The payment schedule contained in this loan requires that you make a balloon payment of \$_____ (amount of balloon payment) which is a payment of more than double the amount of the regular payments. You have an absolute right to obtain a new payment schedule if you default in the payment of any balloon payment.”

If the borrower defaults in the payment of any balloon payment, the borrower shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the borrower, the installment amounts under the new schedule shall not be substantially greater than the average of the preceding installments.

(b) A loan made pursuant to this section shall be subject to this division and not to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(c) An action by any licensee or borrower on a loan made pursuant to this section shall be tried in the county in which the loan was signed by the borrower, in the county in which the borrower resided at the time the loan was entered into, or in the county in which the borrower resides at the commencement of the action.

(d) Paragraphs (6) and (7) of subdivision (a) do not apply to open-end loans.

(e) A security interest provided by any retail installment contract in violation of subdivision (b) of Section 1804.3 of the Civil Code shall not serve as consideration in whole or in part for a loan made under this section, notwithstanding any agreement to the contrary.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22342.

(a) As used in this section, “instant loan check” or “live check” means any loan or extension of credit that is made available in the form of a check, draft, or any other negotiable instrument that can be deposited in a bank or used for third-party payments. “Instant loan check” or “live check” does not include a check, draft, or any other negotiable instrument provided in response to an application for credit or as a means of access to an existing loan or extension of credit, including a home equity or personal line of credit.

(b) No person shall produce, advertise, offer, sell, distribute, or otherwise transfer for use in this state any live check unless the document bears the following phrase printed in 12-point type on the front of the document: “THIS IS A LOAN OR AN EXTENSION OF CREDIT. YOU WILL PAY CHARGES.”

(c) Live checks shall only be negotiable for a period of 30 days after the date printed on the live check. Printed material accompanying the live check shall advise the consumer to void and destroy the live check if it is not going to be negotiated.

(d) Loan solicitations shall be mailed in envelopes with no indication that a negotiable instrument is contained in the mailing. Envelopes shall be marked with “do not forward”

instructions to the postal service in the event that the intended addressee is no longer at the location.

(e) Any loan solicitation made through a live check shall be honored in the full amount by the issuer unless the account on which the solicitation is made is closed by the consumer prior to the date the check is cashed.

(f) In the event that a live check is stolen or incorrectly received by someone other than the intended payee, and the live check is cashed or otherwise negotiated based upon fraud or misrepresentation by someone other than the intended payee, the following safeguards for the consumer shall apply:

(1) The creditor, upon receipt of notification that the consumer did not negotiate the live check and is a victim of identity theft as defined in Section 1798.92 of the Civil Code, shall provide, and the consumer may complete, a statement confirming that the consumer did not deposit, cash, or otherwise negotiate the live check.

(2) Upon completion of the confirmation statement by the consumer, the consumer who was the intended payee shall have no liability for the loan obligation, absent any fraud by that consumer.

(3) Upon receipt of notification that the consumer did not negotiate the live check and is a victim of identity theft as defined in Section 1798.92 of the Civil Code, the creditor shall take appropriate actions set forth in Sections 1785.25 and 1785.26 of the Civil Code.

(g) The commissioner may, after appropriate notice and opportunity for hearing, by order levy administrative penalties against a licensee who violates this section, and the licensee shall be liable for administrative penalties of no more than two thousand five hundred dollars (\$2,500) for each willful violation. Any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all the powers granted under the act. The remedy available under this subdivision is in addition to any other remedies available to the commissioner under this division that may be employed to enforce the provisions of this section.

(h) Nothing in this section shall preclude the application of any section or rule under this division.

(Added by Stats. 2002, Ch. 772, Sec. 16. Effective January 1, 2003.)

22345.

(a) Any person who violates any provision of Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) or any provision of Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, violates this chapter.

(b) With respect to any consumer loans covered by Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) or by Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, a person that does not market consumer loans to, or does not extend those

loans to, covered borrowers, as that term is defined under Section 232 of Title 32 of the Code of Federal Regulations, as published on August 31, 2007, in Volume 72 of the Federal Register, shall not be in violation of Section 394 of the Military and Veterans Code.

(c) This section shall become operative on October 1, 2007.

(Added by Stats. 2007, Ch. 358, Sec. 3. Effective October 9, 2007. Section operative from October 1, 2007, by its own provisions.)

22346.

Any licensee that violates any provision of any of the following federal acts or regulations violates this division:

(a) The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.).

(b) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(c) The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639).

(d) Any regulation promulgated under any of the federal acts in subdivision (a), (b), or (c).

(Added by Stats. 2009, Ch. 629, Sec. 6. Effective January 1, 2010.)

22347.

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

(Added by Stats. 2009, Ch. 160, Sec. 42. Effective October 11, 2009.)

ARTICLE 3.6. Pilot Program for Increased Access to Responsible Small Dollar Loans [22365 - 22381]

(Article 3.6 added by Stats. 2013, Ch. 467, Sec. 2.)

22365.

(a) The Pilot Program for Increased Access to Responsible Small Dollar Loans is hereby established.

(b) The Legislature finds and declares that consumer demand for responsible installment loans in principal amounts of at least three hundred dollars (\$300) but less than two thousand five hundred dollars (\$2,500) exceeds the supply of these loans. In 2010, the Legislature enacted the Pilot Program for Affordable Credit-Building Opportunities, as a first step toward addressing this gap. California's experience to date with that pilot program has identified several improvements that could be made, which would allow more Californians to access

responsible installment loans of at least three hundred dollars (\$300) but less than two thousand five hundred dollars (\$2,500). This new Pilot Program for Increased Access to Responsible Small Dollar Loans is intended to implement those improvements.

(c) For purposes of this article:

(1) "Commissioner" means the Commissioner of Business Oversight.

(2) "Program" means the Pilot Program for Increased Access to Responsible Small Dollar Loans.

(3) Pursuant to Section 22380.5, "licensee" also includes a licensee approved to participate in the former Pilot Program for Affordable Credit-Building Opportunities as described in Article 3.5 (commencing with Section 22348).

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22366.

(a) Any entity licensed under this chapter that wishes to participate in the program, that is in good standing with the commissioner and has no outstanding enforcement actions or deficiencies at the time of its application, shall file an application with the commissioner, in a manner prescribed by the commissioner, and shall pay a fee to the commissioner, in an amount calculated by the commissioner to cover its costs to administer this article.

(b) Any entity wishing to participate in the program that is not licensed pursuant to this chapter may submit a combined application to the commissioner, in a manner prescribed by the commissioner, for licensure under this chapter and admission to the program and shall pay a fee to the commissioner in an amount equal to the fees that would have been imposed if the person had submitted separate applications. To be eligible to apply in this manner, an entity must be free of outstanding enforcement or other disciplinary actions taken against it by any of California's financial regulators or by a financial regulator of another state.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22367.

Every entity approved by the commissioner to participate in the program shall file with the commissioner on or before March 15 an annual report consistent with Section 22159, separate from any other annual report the licensee may be required to file.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22368.

Except as otherwise provided, nothing in this article shall exempt any licensee from any of the provisions of this division or Section 1632 of the Civil Code.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22369.

No licensee may offer or make a loan, nor impose any charges or fees pursuant to Section 22370, nor use a finder pursuant to Section 22371, without prior approval from the commissioner to participate in the program.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22370.

(a) Any loan made pursuant to this section shall comply with the following requirements:

(1) The loan shall be unsecured.

(2) Interest on the loan shall accrue on a simple-interest basis, through the application of a daily periodic rate to the actual unpaid principal balance each day.

(3) The licensee shall disclose the following to the consumer in writing, in a type face no smaller than 12-point type, at the time of application:

(A) The amount borrowed; the total dollar cost of the loan to the consumer if the loan is paid back on time, including the sum of the administrative fee, principal amount borrowed, and interest payments; the corresponding annual percentage rate, calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. 226); the periodic payment amount; the delinquency fee schedule; and the following statement: "Repaying your loan early will lower your borrowing costs by reducing the amount of interest you will pay. This loan has no prepayment penalty."

(B) A statement that the consumer has the right to rescind the loan by notifying the licensee of the consumer's intent to rescind the loan and returning the principal advanced by the end of the business day following the date the loan is consummated.

(4) A licensee may provide the borrower with the disclosures required by paragraph (3) in a mobile or other electronic application, on which the size of the type face of the disclosure can be manually modified by a prospective borrower, if the prospective borrower is given the option to print the disclosure in a type face of at least 12-point size or is provided by the licensee with a hardcopy of the disclosure in a type face of at least 12-point size before the loan is consummated.

(5) The loan shall have a minimum principal amount upon origination of three hundred dollars (\$300) and a term of not less than the following:

(A) Ninety days for loans whose principal balance upon origination is less than five hundred dollars (\$500).

(B) One hundred twenty days for loans whose principal balance upon origination is at least five hundred dollars (\$500), but is less than one thousand five hundred dollars (\$1,500).

(C) One hundred eighty days for loans whose principal balance upon origination is at least one thousand five hundred dollars (\$1,500).

(b) As an alternative to the charges authorized by Section 22303 or 22304, a licensee approved by the commissioner to participate in the program may contract for and receive charges for a loan made pursuant to this section at an annual simple interest rate not to exceed the following:

(1) The lesser of 36 percent or the sum of 32.75 percent plus the United States prime lending rate, as of the date of loan origination, on that portion of the unpaid principal balance of the loan up to and including, but not in excess of, one thousand dollars (\$1,000). The interest rate calculated as of the date of loan origination shall be fixed for the life of the loan.

(2) The lesser of 35 percent or the sum of 28.75 percent plus the United States prime lending rate, as of the date of loan origination, on that portion of the unpaid principal balance of the loan in excess of one thousand dollars (\$1,000), but less than two thousand five hundred dollars (\$2,500). The interest rate calculated as of the date of loan origination shall be fixed for the life of the loan.

(c) (1) As to any loan made under this section, a licensee approved by the commissioner to participate in the program may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, in an amount not to exceed the applicable of the following:

(A) Seven percent of the principal amount, exclusive of the administrative fee, or ninety dollars (\$90), whichever is less, on the first loan made to a borrower.

(B) Six percent of the principal amount, exclusive of the administrative fee, or seventy-five dollars (\$75), whichever is less, on the second and subsequent loans made to that borrower.

(2) A licensee shall not charge the same borrower an administrative fee more than once in any four-month period.

(3) For purposes of this section, "refinance" means the replacement or revision of an existing loan contract with a borrower that results in an extension of additional principal to that borrower. A licensee shall not refinance a loan made under this section, unless all of the following conditions are met at the time the borrower submits an application to refinance:

(A) The borrower has repaid at least 60 percent of the outstanding principal remaining on his or her loan.

(B) The borrower is current on his or her outstanding loan.

(C) The licensee underwrites the new loan in accordance with paragraph (4) of subdivision (f).

(D) If the loan proceeds of both the original loan and the refinance loan are to be used for personal, family, or household purposes, the borrower has not previously refinanced the outstanding loan more than once.

(4) Notwithstanding paragraph (3), an administrative fee shall not be contracted for or received in connection with the refinancing of a loan unless at least eight months have elapsed since the receipt of a previous administrative fee paid by the borrower. With the exception of a loan that

is refinanced, only one administrative fee may be contracted for or received until the loan has been repaid in full. Section 22305 shall not apply to any loan made under this section.

(d) Notwithstanding subdivision (a) of Section 22320.5, a licensee approved by the commissioner to participate in the program may require reimbursement from a borrower for the actual insufficient funds fees incurred by that licensee due to actions of the borrower, and may contract for and receive a delinquency fee that is one of the following amounts:

(1) For a period of delinquency of not less than seven days, an amount not in excess of fourteen dollars (\$14).

(2) For a period of delinquency of not less than 14 days, an amount not in excess of twenty dollars (\$20).

(e) If a licensee opts to impose a delinquency fee, it shall use the delinquency fee schedule described in subdivision (d), subject to all of the following:

(1) No more than one delinquency fee may be imposed per delinquent payment.

(2) No more than two delinquency fees may be imposed during any period of 30 consecutive days.

(3) No delinquency fee may be imposed on a borrower who is 180 days or more past due if that fee would result in the sum of the borrower's remaining unpaid principal balance, accrued interest, and delinquency fees exceeding 180 percent of the original principal amount of the borrower's loan.

(4) The licensee or any of its wholly owned subsidiaries shall attempt to collect a delinquent payment for a period of at least 30 days following the start of the delinquency before selling or assigning that unpaid debt to an independent party for collection.

(f) The following shall apply to a loan made by a licensee pursuant to this section:

(1) Prior to disbursement of loan proceeds, the licensee shall either (A) offer a credit education program or seminar to the borrower that has been previously reviewed and approved by the commissioner for use in complying with this section; or (B) invite the borrower to a credit education program or seminar offered by an independent third party that has been previously reviewed and approved by the commissioner for use in complying with this section. The borrower shall not be required to participate in either of these education programs or seminars. A credit education program or seminar offered pursuant to this paragraph shall be provided at no cost to the borrower.

(2) The licensee shall report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, upon acceptance as a data furnisher by that consumer reporting agency. For purposes of this section, a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis is one that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any licensee that is accepted as a data furnisher after admittance into the program must report all borrower payment performance since its inception of lending under the program, as soon as practicable after its acceptance into the program, but in no event more than six months after its acceptance into the program.

(A) The commissioner may approve a licensee for the program, before that licensee has been accepted as a data furnisher by a consumer reporting agency, if the commissioner has a

reasonable expectation, based on information supplied by the licensee, of both of the following:

(i) The licensee will be accepted as a data furnisher, once it achieves a lending volume required of data furnishers of its type by a consumer reporting agency.

(ii) That lending volume will be achieved within the first six months of the licensee commencing lending.

(B) Notwithstanding subparagraph (A), the commissioner shall withdraw approval for pilot program participation from any licensee that fails to become accepted as a data furnisher by a consumer reporting agency within six months of commencing lending under the pilot program.

(3) The licensee shall provide each borrower with the name of the consumer reporting agency or agencies to which it will report the borrower's payment history. A licensee that is accepted as a data furnisher after admittance into the program shall notify its borrowers, as soon as practicable following acceptance as a data furnisher, regarding the name of the consumer reporting agency or agencies to which it will report that borrower's payment history.

(4) (A) The licensee shall underwrite each loan to determine a borrower's ability and willingness to repay the loan pursuant to the loan terms, and shall not make a loan if it determines, through its underwriting, that the borrower's total monthly debt service payments, at the time of origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the licensee, exceed 50 percent of the borrower's gross monthly income.

(B) (i) The licensee shall seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The licensee shall verify that information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

(ii) Notwithstanding the verification requirement in subparagraph (A), the licensee shall request from the borrower and include all information obtained from the borrower regarding outstanding deferred deposit transactions in the calculation of the borrower's outstanding debt obligations.

(iii) The licensee shall not be required to consider, for purposes of debt-to-income ratio evaluation, loans from friends or family.

(C) The licensee shall also verify the borrower's income that the licensee relies on to determine the borrower's debt-to-income ratio using information from either of the following:

(i) Electronic means or services that provide reliable evidence of the borrower's actual income.

(ii) Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(5) The licensee shall notify each borrower, at least two days prior to each payment due date, informing the borrower of the amount due, and the payment due date. Notification may be provided by any means mutually acceptable to the borrower and the licensee. A borrower shall have the right to opt out of this notification at any time, upon electronic or written request to

the licensee. The licensee shall notify each borrower of this right prior to disbursing loan proceeds.

(g) (1) Notwithstanding Sections 22311 to 22315, inclusive, no person, in connection with, or incidental to, the making of any loan made pursuant to this article, may offer, sell, or require the borrower to contract for "credit insurance" as defined in paragraph (1) of subdivision (a) of Section 22314 or insurance on tangible personal or real property of the type specified in Section 22313.

(2) Notwithstanding Sections 22311 to 22315, inclusive, no licensee, finder, or any other person that participates in the origination of a loan under this article shall refer a borrower to any other person for the purchase of "credit insurance" as defined in paragraph (1) of subdivision (a) of Section 22314 or insurance on tangible personal or real property of the type specified in Section 22313.

(h) (1) No licensee shall require, as a condition of providing the loan, that the borrower waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the commissioner or any court or other public entity, or that the borrower agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by a borrower must be knowing, voluntary, and in writing, and expressly not made a condition of doing business with the licensee. Any waiver that is required as a condition of doing business with the licensee shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not made a condition of the contract with the borrower.

(2) No licensee shall refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the commissioner or any court or other public entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

(3) This subdivision shall not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute, after a claim or dispute has arisen. Nothing in this subdivision shall affect the enforceability or validity of any other provision of the contract.

(i) This section shall not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251. For purposes of this subdivision, "bona fide principal amount" shall be determined in accordance with Section 22251.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22371.

(a) A licensee who is approved by the commissioner to participate in the program may use the services of one or more finders as provided in this article.

(b) For purposes of this article, a “finder” means an entity that, at the finder’s physical location for business, brings a licensee and a prospective borrower together for the purpose of negotiating a loan contract.

(c) An entity, whose sole means of bringing a licensee and a prospective borrower together at that entity’s physical location for business is via an electronic access point through which a prospective borrower may directly access the Internet Web site of a licensee is not a “finder” for purposes of this article.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22372.

(a) A finder may perform one or more of the following services for a licensee at the finder’s physical location for business:

(1) Distributing, circulating, using, or publishing preprinted brochures, flyers, factsheets, or other written materials relating to loans that the licensee may make or negotiate and that have been reviewed and approved in writing by the licensee prior to their being distributed, circulated, or published.

(2) Providing written factual information about loan terms, conditions, or qualification requirements to a prospective borrower that has been either prepared by the licensee or reviewed and approved in writing by the licensee. A finder may discuss that information with a prospective borrower in general terms, but may not provide counseling or advice to a prospective borrower.

(3) Notifying a prospective borrower of the information needed in order to complete a loan application without providing counseling or advice to a prospective borrower.

(4) Entering information provided by the prospective borrower on a preprinted or electronic application form or onto a preformatted computer database without providing counseling or advice to a prospective borrower.

(5) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the licensee.

(6) Contacting the licensee to determine the status of a loan application.

(7) Communicating a response that is returned by the licensee’s automated underwriting system to a borrower or a prospective borrower.

(8) Obtaining a borrower’s signature on documents prepared by the licensee and delivering final copies of the documents to the borrower.

(b) A finder shall not engage in any of the following activities:

(1) Providing counseling or advice to a borrower or prospective borrower.

(2) Providing loan-related marketing material that has not previously been approved by the licensee to a borrower or a prospective borrower.

(3) Interpreting or explaining the relevance, significance, or effect of any of the marketing materials or loan documents the finder provides to a borrower or prospective borrower.

(c) Any person who performs one or more of the following activities is a broker within the meaning of Section 22004 rather than a finder within the meaning of this section:

(1) Negotiating the price, length, or any other loan term between a licensee and a prospective borrower.

(2) Advising either a prospective borrower or a licensee as to any loan term.

(3) Offering information pertaining to a single prospective borrower to more than one licensee, except that, if a licensee has declined to offer a loan to a prospective borrower and has so notified that prospective borrower in writing, the person may then offer information pertaining to a single prospective borrower to another licensee with which it has a finder's agreement.

(4) Personally contacting or providing services to a borrower or prospective borrower at any place other than the finder's physical location for business.

(d) A finder shall comply with all laws applicable to the licensee that impose requirements upon the licensee for safeguards for information security.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22373.

(a) At the time the finder receives or processes an application for a program loan, the finder shall provide the following statement to the applicant, on behalf of the licensee, in no smaller than 10-point type, and shall ask the applicant to acknowledge receipt of the statement in writing:

"Your loan application has been referred to us by [Name of Finder]. We may pay a fee to [Name of Finder] for the successful referral of your loan application. IF YOU ARE APPROVED FOR THE LOAN, [NAME OF LICENSEE] WILL BECOME YOUR LENDER, AND YOU WILL BE BUILDING A RELATIONSHIP WITH [NAME OF LICENSEE]. If you wish to report a complaint about [Name of Finder] or [Name of Licensee] regarding this loan transaction, you may contact the Department of Business Oversight, Division of Corporations at 1-866-ASK-CORP (1-866-275-2677), or file your complaint online at www.corp.ca.gov."

(b) If the loan is consummated, the licensee shall provide the borrower a written copy of the disclosure notice within two weeks following the date of the loan consummation. A licensee may include the disclosure within its loan contract, or may provide it as a separate document to the borrower, via any means acceptable to the borrower.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22374.

(a) A finder may be compensated by the licensee pursuant to the written agreement between the licensee and the finder, as described in Section 22376.

(b) The compensation of a finder by a licensee shall be subject to all of the following requirements:

(1) No fee shall be paid to a finder in connection with a loan application until and unless that loan is consummated.

(2) No fee shall be paid to a finder based upon the principal amount of the loan.

(3) No fee paid to a finder shall exceed the following amounts:

(A) Forty-five dollars (\$45) per loan for the first 40 loans originated each month at the finder's location.

(B) Forty dollars (\$40) per loan for any subsequent loans originated during that month at the finder's location.

(4) The finder's location for services under this article and other information required by Section 22375 has been reported to the commissioner and the finder has not been barred from providing services at that location by the commissioner.

(c) No licensee shall, directly or indirectly, pass on to a borrower any fee, or any portion of any fee, that the licensee pays to a finder in connection with that borrower's loan or loan application.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22375.

A licensee that utilizes the service of a finder shall do all of the following:

(a) Notify the commissioner within 15 days of entering into a contract with a finder, on a form acceptable to the commissioner, regarding all of the following:

(1) The name and business address of the finder and all locations at which the finder will perform services under this article.

(2) The name and contact information for an employee of the finder who is knowledgeable about, and has the authority to execute, the contract governing the business relationship between the finder and the licensee.

(3) The name and contact information for one or more employees of the finder who are responsible for that finder's finding activities on behalf of the licensee.

(4) A list of the activities the finder shall perform on behalf of the licensee.

(5) Any other information requested by the commissioner.

(b) Pay an annual finder registration fee to the commissioner in an amount to be established by the commissioner by regulation for each finder utilized by the licensee.

(c) Submit an annual report to the commissioner including any information pertaining to each finder and the licensee's relationship and business arrangements with each finder as the commissioner may by regulation require.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22376.

All arrangements between a licensee and a finder shall be set forth in a written agreement between the parties. The agreement shall contain a provision establishing that the finder agrees to comply with all regulations that are established by the commissioner pursuant to this article regarding the activities of finders and that the commissioner shall have access to all of the finder's books and records that pertain to the finder's operations under the agreement with the licensee.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22377.

(a) The commissioner may examine the operations of each licensee and each finder to ensure that the activities of the licensee and the finder are in compliance with this article. The costs of the commissioner's examination of each finder shall be attributed to the commissioner's examination of the licensee. Any violation of this article by a finder or a finder's employee shall be attributed to the finance lender with whom it has entered into an agreement for purposes of determining the licensee's compliance with this division.

(b) Upon a determination that a finder has acted in violation of this article, or any implementing regulation, the commissioner shall have the authority to disqualify a finder from performing services under this article, bar a finder from performing services at one or more specific locations of that finder, terminate a written agreement between a finder and a licensee, and, if the commissioner deems that action in the public interest, prohibit the use of that finder by all licensees accepted to participate in the pilot program.

(c) In addition to any other penalty allowed by law, the commissioner may impose an administrative penalty up to two thousand five hundred dollars (\$2,500) for violations of this article committed by a finder.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22378.

Notwithstanding the requirements of Section 22102 and its implementing regulations, a licensee accepted to participate in the program may appoint one or more branch managers

with responsibility for multiple branch locations, subject to approval by the commissioner, and a finding by the commissioner that the centralized nature of underwriting and other key business activities performed by the licensee does not require a unique manager for each branch location, to ensure the protection of consumers who seek out loans from the licensee. The commissioner may revoke this approval at any time, upon a finding that a unique branch manager at each branch location is required for consumer protection.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22379.

(a) Notwithstanding any other law, the commissioner shall examine each licensee that is accepted into the program at least once every 24 months.

(b) Notwithstanding subdivision (a), the commissioner shall have the authority to waive one or more branch office examinations, if the commissioner deems that the branch office examinations are not necessary for the protection of the public, due to the centralized operations of the licensee or other factors acceptable to the commissioner.

(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.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22380.

(a) On or before July 1, 2015, and again, on or before January 1, 2017, the commissioner shall post a report on his or her Internet Web site summarizing utilization of the Pilot Program for Increased Access to Responsible Small Dollar Loans. The report required to be submitted on or before July 1, 2015, shall additionally include the information required by former Section 22361, summarizing utilization of the Pilot Program for Affordable Credit-Building Opportunities, which was created by Chapter 640 of the Statutes of 2010.

(b) The information disclosed to the commissioner for the commissioner's use in preparing the report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(c) If there is more than one licensee approved to participate in the program under this article, the report required pursuant to subdivision (a) shall state information in aggregate so as not to identify data by specific licensee.

(d) The report required pursuant to this section shall specify the time period to which the report corresponds, and shall include, but not be limited to, the following for that time period:

(1) The number of entities that applied to participate in the program.

- (2) The number of entities accepted to participate in the program.
- (3) The reason or reasons for rejecting applications for participation, if applicable. This information shall be provided in a manner that does not identify the entity or entities rejected.
- (4) The number of program loan applications received by lenders participating in the program, the number of loans made pursuant to the program, the total amount loaned, the distribution of loan lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those loans.
- (5) The number of borrowers who obtained more than one program loan and the distribution of the number of loans per borrower.
- (6) Of the number of borrowers who obtained more than one program loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase.
- (7) The income distribution of borrowers upon loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-to-moderate-income census tract at the time of their loan application.
- (8) The number of borrowers who obtained loans for the following purposes, based on borrower responses at the time of their loan applications indicating the primary purpose for which the loan was obtained:
 - (A) Medical.
 - (B) Other emergency.
 - (C) Vehicle repair.
 - (D) Vehicle purchase.
 - (E) To pay bills.
 - (F) To consolidate debt.
 - (G) To build or repair credit history.
 - (H) To finance a purchase of goods or services other than a vehicle.
 - (I) For other than personal, family, or household purposes.
 - (J) Other.
- (9) The number of borrowers who self-report that they had a bank account at the time of their loan application, the number of borrowers who self-report that they had a bank account and used check-cashing services, and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.
- (10) With respect to refinance loans, the report shall specifically include the following information:
 - (A) The number and percentage of borrowers who applied for a refinance loan.
 - (B) Of those borrowers who applied for a refinance loan, the number and percentage of borrowers who obtained a refinance loan.
 - (C) Of those borrowers who obtained a refinance loan:
 - (i) The percentage of borrowers who refinanced once.
 - (ii) The percentage of borrowers who refinanced twice.
 - (iii) The percentage of borrowers who refinanced more than twice.
 - (D) Of those borrowers who obtained a refinance loan, the average percentage of principal paid down before obtaining a refinance loan.

(E) Of those borrowers who obtained a refinance loan, the average amount of additional principal extended.

(F) Of those borrowers who obtained a refinance loan, the average number of late payments made on the loan that was refinanced.

(11) The number and type of finders used by licensees and the relative performance of loans consummated by finders compared to the performance of loans consummated without a finder.

(12) The number and percentage of borrowers who obtained one or more program loans on which late fees were assessed, the total amount of late fees assessed, and the average late fee assessed by dollar amount and as a percentage of the principal amount loaned.

(13) (A) The performance of loans under this article, as reflected by all of the following:

(i) The number and percentage of pilot program borrowers who experienced at least one delinquency lasting between 7 and 29 days, and the distribution of principal loan amounts corresponding to those delinquencies.

(ii) The number and percentage of pilot program borrowers who experienced at least one delinquency lasting between 30 and 59 days, and the distribution of principal loan amounts corresponding to those delinquencies.

(iii) The number and percentage of pilot program borrowers who experienced at least one delinquency lasting 60 days or more, and the distribution of principal loan amounts corresponding to those delinquencies.

(iv) The number and percentage of pilot program borrowers who experienced at least one delinquency of greater than 7 days and who did not subsequently bring their loan current.

(v) Among loans that were ever delinquent for 7 days or more, the average number of times borrowers experienced a delinquency of 7 days or more.

(B) To the extent data are readily available to the commissioner, the commissioner shall include in his or her report comparable delinquency data for unsecured loans made by persons licensed under Chapter 2 (commencing with Section 22365) of Division 9 in principal amounts between two thousand five hundred dollars (\$2,500) and four thousand nine hundred ninety-nine dollars (\$4,999), and in principal amounts between five thousand dollars (\$5,000) and nine thousand nine hundred ninety-nine dollars (\$9,999), and for unsecured extensions of credit made by state-chartered banks and credit unions under the commissioner's jurisdiction, in principal amounts between two thousand five hundred dollars (\$2,500) and four thousand nine hundred ninety-nine dollars (\$4,999), and in principal amounts between five thousand dollars (\$5,000) and nine thousand nine hundred ninety-nine dollars (\$9,999).

(14) The number and types of violations of this article by finders, which were documented by the commissioner.

(15) The number and types of violations of this article by licensees, which were documented by the commissioner.

(16) The number of times that the commissioner disqualified a finder from performing services, barred a finder from performing services at one or more specific locations of the finder, terminated a written agreement between a finder and a licensee, or imposed an administrative penalty.

(17) The number of complaints received by the commissioner about a licensee or a finder, and the nature of those complaints.

(18) Recommendations for improving the program.

(19) Recommendations regarding whether the program should be continued after January 1, 2018.

(e) The commissioner shall conduct a random sample survey of borrowers who have participated in the program to obtain information regarding the borrowers' experience and licensees' compliance with this article. The results of this survey shall be included in the report required by this section.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22380.5.

(a) The Pilot Program for Affordable Credit-Building Opportunities as described in Article 3.5 (commencing with Section 22348) is abolished.

(b) All powers, duties, purposes, jurisdiction, responsibilities, and functions of the Commissioner of Corporations with respect to the former Article 3.5 (commencing with Section 22348) are transferred to the Commissioner of Business Oversight.

(c) Any licensee approved to participate in the Pilot Program for Affordable Credit-Building Opportunities as described in the former Article 3.5 (commencing with Section 22348) shall be transferred to, and subject to, the provisions of this article.

(d) Any outstanding loans made under the former Pilot Program for Affordable Credit-Building Opportunities as described in Article 3.5 (commencing with Section 22348) shall continue in existence and be valid on and after January 1, 2014, subject to those terms and conditions that existed at the time the loan was made pursuant to the former Article 3.5 (commencing with Section 22348).

(e) Data submitted to the commissioner by licensees accepted to the former Pilot Program for Affordable Credit-Building Opportunities shall be summarized by the commissioner in the report due to the Legislature on or before July 1, 2015, pursuant to subdivision (a) of Section 22380.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, pursuant to Section 22381.)

22381.

This article shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

(Added by Stats. 2013, Ch. 467, Sec. 2. Effective January 1, 2014. Repealed as of January 1, 2018, by its own provisions. Repeal affects Article 3.6, commencing with Section 22365.)

ARTICLE 4. Charges On Scheduled Balances [22400 - 22402]

(Article 4 added by Stats. 1994, Ch. 1115, Sec. 2.)

22400.

This article applies only to loan contracts payable in substantially equal and consecutive monthly installments of principal and charges combined, the first of which is due not less than 15 days nor more than one month and 15 days from the date the loan is made. In lieu of computing charges and applying payments as provided in Section 22307, a licensee may precompute charges and apply payments as follows:

(a) The total charges which would be earned if the contract were repaid exactly according to its terms, at the monthly rate stated in the contract, may be precomputed when the loan is made and added to the principal of the loan. For the purpose of computation, a month shall be that period of time from any date in one month to the corresponding date in the next month, and if there is no corresponding date, then to the last day of the next month. The principal amount of the loan shall be its face value as referred to in Section 22309. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. The acceptance of payment of charges on loans made under the provisions of this article shall not be deemed to constitute payment deduction or receipt thereof in advance nor compounding under Section 22309. Precomputed charges shall be subject to the following adjustments:

(1) The portion of the precomputed charge applicable to any particular monthly installment period shall bear the same ratio to the total precomputed charge, excluding any adjustment made for a first period of more than one month, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the loan contract.

(2) If the loan contract is paid in full by cash, a new loan, refinancing, or otherwise, the borrower shall receive a rebate of that portion of the precomputed charge that is the difference between the total precomputed charge and the charges at the contract rate computed in accordance with the provisions of Section 22307 or 22308. The tender, by the borrower or at his or her request, of an amount equal to the unpaid balance, less the required rebate, must be accepted by the licensee in full payment of the contract.

(3) If three or more, but not all, installments are prepaid in full at any one time, all of the prior charges for the loan shall be recalculated and all subsequent charges for the remaining term of the loan shall be recalculated by applying each payment first to charges and the remainder to principal in accordance with the provisions of Section 22307 or 22308.

(4) If the payment date of all wholly unpaid installments on which no default charge has been collected is deferred one or more full months and the contract so provides, the licensee may charge and collect a deferment charge. The deferment charge shall not exceed the portion of the precomputed charge applicable prior to deferment, to the first deferred monthly installment period multiplied by the number of months the maturity of the contract is deferred. The number of months shall not exceed the number of full installments that are in default on the date of deferment or that may become due within 15 days of that date. When a deferment charge is made, no portion of the precomputed charge shall apply to the

installment periods in which no installment payment is required by reason of the deferment. In computing any default charge or required rebate, the portion of the precomputed charge applicable to each deferred balance and installment period following the deferment period and prior to the deferred maturity shall remain the same as that applicable to the balances and periods under the original loan contract. The charge may be collected at the time of deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract. However, if the payment is sufficient to pay, in addition to the appropriate deferment charge, any installment that is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred nor subject to the deferment charge.

(5) In the event of default of more than 10 days in the payment of one-half or more of any scheduled installment, the licensee may charge and collect a default charge not exceeding an amount equal to the portion of the precomputed charge applicable to the final installment period. The charge may not be collected more than once for the same default and may be collected at the time of the default or at any time thereafter. If the default charge is deducted from any payment received after default occurs, and the deduction results in the default of a subsequent installment, no charge may be made for the resulting default.

(6) A borrower and licensee may agree that the first installment due date may be not more than 15 days more than one month and the amount of the installment may be increased by one-thirtieth of the portion of the precomputed charge applicable to a first installment of one month for each extra day.

(b) The statement to be given to the borrower as provided in subdivision (a) of Section 22337 and the contract shall disclose in addition to other required information the principal amount of the loan exclusive of charges and the basis for computing the refund of precomputed charges in case of prepayment in full or acceleration of maturity and for computing default and deferment charges. The delivery of a receipt of each payment showing the total amount of each payment complies with subdivision (d) of Section 22337.

(c) If the maturity of the contract when the charges are precomputed is accelerated for any reason, the licensee shall make the same refund or credit as would be required if the contract was paid in full on the date of acceleration. The unpaid balance shall be treated as the unpaid principal balance, and thereafter the unpaid balance of the contract shall bear charges at the agreed rate of charge if the loan contract so provides.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22401.

With respect to precomputed loans, licensees shall be subject only to, comply only with, and derive authority only from Sections 22400 and 22402, notwithstanding any other provision of law that is not within this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22402.

When charges on a loan of an original bona fide principal amount of five thousand (\$5,000) or more have been precomputed in a manner similar to that provided in Section 22400, and the loan is prepaid in full by cash, a new loan, refinancing, or otherwise, or the maturity of the loan contract is accelerated for any reason, the borrower shall receive a rebate or credit of that portion of the precomputed charge that is the difference between the total precomputed charge and the charges at the contract rate computed in accordance with the provisions of Section 22307 or 22308, or on the basis of 12 equal months of 30 days each, on the assumption that all payments were received by the licensee on their respective due dates. This section does not apply to charges paid by the borrower to the lender or others, such as charges computed as a percentage of the loan, that are fully earned upon making the loan, or to charges agreed to be paid by the borrower upon prepayment of a loan secured by a lien upon real property.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

ARTICLE 5. Open-End Loan Programs [22450 - 22467]

(Article 5 added by Stats. 1994, Ch. 1115, Sec. 2.)

22450.

As used in this division, "open-end credit program" means a licensee's plan for making open-end loans pursuant to a loan agreement that sets forth the terms and conditions governing the use of the open-end credit program, expressly states that the loan is made pursuant to this article, and provides that:

- (a) The borrower may use the open-end credit program to obtain money, goods, labor, or services on credit. The licensee makes open-end loans to the borrower for the purpose of paying money to or at the direction of the borrower or paying obligations that the borrower creates through use of the open-end credit program.
- (b) The amount of each advance and the charges and other permitted costs are debited to an account.
- (c) The charges are computed from time to time on the unpaid balances of the borrower's account, excluding from the computation any unpaid charges other than permitted fees, costs, and expenses.
- (d) The borrower has the privilege of paying the account in full at any time.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22451.

If an open-end credit program is not primarily for the purpose of purchasing or leasing goods or services from the licensee, then all credit extended through use of the program, including transactions that involve the purchase or lease of goods or services from the licensee, shall be subject to this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22452.

Subject to the written approval of the commissioner of the licensee's plan of business for making open-end loans as not being misleading or deceptive and subject to regulations the commissioner may adopt with respect to open-end loans under Section 22150, a licensee may make open-end loans pursuant to this article and may contract for and receive thereon charges as set forth in Sections 22303, 22304, and 22308. These charges may be calculated on an amount not exceeding the greater of:

(a) The actual daily unpaid balances of the open-end account in the billing cycle for which the charge is made, in which case one-thirtieth of the monthly rate may be charged for each day the unpaid balance is outstanding.

(b) The average daily unpaid balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all advances and other debits and deducting all payments and other credits made or received as of that day. The billing cycle shall be monthly. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22453.

The minimum monthly payment shall be determined by any of the following:

(a) The amount calculated by multiplying the unpaid principal balance, after an advance and including the advance, by a percent agreed upon by the borrower and the licensee, which shall be no less than 2¹/₂ percent. The minimum payment shall continue at the amount determined pursuant to this paragraph until a subsequent loan advance is made.

(b) The amount calculated by multiplying the unpaid balance at the end of each billing cycle by a percent agreed upon by the borrower and the licensee, which shall be no less than 5 percent.

(c) Any other bona fide amount agreed upon by the borrower and the licensee which would be sufficient to pay all charges and some principal, originally scheduled to be due by the borrower as of each scheduled due date.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Amended by Stats. 1995, Ch. 692, Sec. 6. Effective January 1, 1996.)

22454.

On open-end loans, the licensee may contract for and receive the fees, costs, and expenses permitted on other loans, including those permitted by subdivisions (a), (b), (c), and (d) of Section 22313 and subdivision (d) of Section 22314, except that the charge for credit insurance under Section 22314 shall be on a monthly basis and shall be actuarially consistent with the premium rate for the same coverage.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22455.

(a) In lieu of subdivisions (b), (c), (d), (e), and (f) of Section 22314, with respect to open-end loans, a licensee may provide credit insurance with the borrower's consent, in a form to be approved by the Insurance Commissioner, in an amount not in excess of the amount of the indebtedness. For credit life or disability insurance, the licensee may collect from the borrower an amount established pursuant to Section 779.36 of the Insurance Code.

(b) If life insurance is provided, and if the insured borrower dies during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan outstanding on the date of his or her death, without any exception, reservation, or limitation.

(c) If disability insurance is provided, and if the insured borrower becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay all amounts attributable to the loan balance at the time of commencement of disability that subsequently become due on the loan thereafter during the period of disability, in accordance with subdivision (d) of Section 22315, without any exception, reservation, or limitation.

(d) If loss-of-income insurance is provided, and if the insured borrower becomes unemployed during the term of the loan contract, the insurance shall be sufficient to pay all amounts attributable to the loan balance at the time of commencement of unemployment in accordance with subdivision (d) of Section 22321 without any exception, reservation, or limitation.

(e) Any credit insurance that is provided shall be in force as soon as the loan is made or coverage is agreed upon, whichever is later. No credit insurance written in connection with an open-end loan shall be canceled by the lender because of delinquency of the borrower in the

making of the minimum payments thereon unless one or more of the payments is past due for a period of 90 days or more, and the lender shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

This section does not apply to any open-end loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more as determined in accordance with Section 22467.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22456.

Section 22309 shall apply to open-end loans with the following variations:

(a) To comply with Section 22309, in the case of open-end loan advances directly to the borrower, the licensee shall deliver to the borrower, at the time of each loan advance, an amount equal to the face value of the advance.

(b) To comply with Section 22309, in the case of an open-end loan advance in the form of a payment by the licensee to a person from whom a borrower obtained money, goods, labor, or services, the licensee shall deliver to that person the amounts necessary to fulfill the borrower's obligation to that person under the transaction.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22457.

In lieu of Section 22332, the open-end loan agreement shall contain the name, address, and license number of the finance lender and shall disclose the nature of the security taken, the method of determining the minimum payments that will be required to repay the initial advance and any subsequent advances on the loan, and the agreed rate of charge.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22458.

In lieu of subdivision (a) of Section 22337, with respect to open-end loans, except in the case of an account that the licensee deems to be uncollectible, or for which delinquency collection procedures have been instituted, the licensee shall deliver or cause to be delivered to the borrower, or any one thereof, for each billing cycle at the end of which there is an outstanding balance in the account, or to which a finance charge is imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the date and amount

of any subsequent loan advance during the period, the amounts and dates of crediting to the account during the billing cycle that payments are credited, the amount of any finance charge debited to the account during the billing cycle, the annual percentage rate of finance charge determined under Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226), the balance on which the finance charge was computed, the closing date of the billing cycle, the outstanding balance on that date, and the minimum monthly payment required in the absence of any additional advance. If there has been any change in the nature of the security for the loan since the next preceding advance, the statement shall contain or be accompanied by a statement of the nature of the security for the loan after that change.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22459.

Subdivision (e) of Section 22337 shall not apply to an open-end loan that has no balance outstanding if the open-end loan agreement continues in effect.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22460.

Section 22333 shall not apply to a change in terms of an open-end loan if notice is given to the borrower in accordance with subsection (c) of Section 226.9 of Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22461.

Subdivision (a) of Section 22151, Sections 22154 and 22325, and subdivision (b) of Section 22337 shall not apply to a licensee with respect to advances made through an open-end credit program.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22462.

The payment of fees for participation in an open-end credit program, the acceptance by a borrower of the form of the licensee's program, and the borrower's agreement to the

licensee's program shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22201, 22311, or 22312.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22463.

Nothing in this article limits the authority of the commissioner to disapprove advertising with respect to open-end loans pursuant to Section 22165.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22464.

This article does not apply to loans other than open-end loans.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22465.

Section 22400 does not apply to open-end loans.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22466.

An open-end loan is in compliance with Section 22330 if it is an open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22467.

(a) Any section that refers to this section or that is subject to Section 22251 does not apply to any open-end loan of the bona fide principal amount specified in the regulatory ceiling

provision of that section or more, or to a duly licensed finance lender in connection with any such loan if that provision is not used for the purpose of evading this division.

(b) In determining whether an open-end loan is an open-end loan of a bona fide principal amount specified in any section in this division or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the open-end loan shall be deemed to be for that amount or more if both the following criteria are met:

(1) The line of credit is equal to or more than the bona fide principal amount of the specified amount.

(2) The initial advance was equal to or more than the bona fide principal amount of the specified amount.

(c) A subsequent advance of money of less than the specified amount pursuant to the open-end loan agreement between a borrower and a licensed finance lender shall be deemed to be a loan of a bona fide principal amount of the specified amount if the criteria of paragraphs (1) and (2) of subdivision (b) have been met, even though the actual unpaid balance after the advance or at any other time is less than the bona fide principal amount of the specified amount.

(d) Notwithstanding subdivisions (b) and (c), the amount of the line of credit of an unsecured open-end loan shall be the criterion to determine whether an unsecured open-end loan is of a bona fide principal amount or more specified in any section in this division.

(e) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the provisions of subdivision (c) of Section 22251 shall apply to open-end loans.

(Amended by Stats. 1999, Ch. 347, Sec. 5. Effective January 1, 2000.)

ARTICLE 6. Disclosure of Loan Applications [22470- 22470.]

(Article 6 added by Stats. 2001, Ch. 493, Sec. 3.)

22470.

(a) (1) Upon the request of a person who has obtained a police report pursuant to Section 530.6 of the Penal Code, a finance lender engaged in the business of making consumer loans shall provide to the person, or to a law enforcement officer specified by the person, copies of all application forms or application information containing the person's name, address, or other identifying information pertaining to the application filed with the finance lender by an unauthorized person in violation of Section 530.5 of the Penal Code.

(2) Before providing copies pursuant to paragraph (1), the finance lender shall inform the requesting person of the categories of identifying information that the unauthorized person used to complete the application, and shall require the requesting person to provide identifying information in those categories and a copy of the police report.

(3) The finance lender shall provide copies of all forms and information required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

(b) (1) Before a finance lender provides copies to a law enforcement officer pursuant to paragraph (1) of subdivision (a), the finance lender may require the requesting person to provide them with a signed and dated statement by which the person does all of the following:

(A) Authorizes disclosure for a stated period.

(B) Specifies the name of the agency or department to which the disclosure is authorized.

(C) Identifies the type of records that the person authorizes to be disclosed.

(2) The finance lender shall include in the statement to be signed by the requesting person a notice that the person has the right at any time to revoke the authorization.

(c) As used in this section, "law enforcement officer" means a peace officer as defined by Section 830.1 of the Penal Code.

(Added by Stats. 2001, Ch. 493, Sec. 3. Effective January 1, 2002.)

CHAPTER 3. Commercial Loans [22500 - 22650] *(Chapter 3 added by Stats. 1994, Ch. 1115, Sec. 2.)*

ARTICLE 1. Definitions [22500 - 22502]

(Article 1 added by Stats. 1994, Ch. 1115, Sec. 2.)

22500.

“Charges” include the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of a loan or forbearance of money, credit, goods, or things in action, or any other service rendered.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22501.

“Charges” do not include commissions received as a licensed insurance agent or broker.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22502.

“Commercial loan” means a loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes.

For purposes of determining whether a loan is a commercial loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

ARTICLE 2. Exemptions [22550 - 22551]

(Article 2 added by Stats. 1994, Ch. 1115, Sec. 2.)

22550.

Sections 22152, 22154, 22155, 22163, and 22164 do not apply to any commercial loan of a bona fide principal amount of five thousand dollars (\$5,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22551.

In determining whether a loan is a loan of a bona fide principal amount of the specified amount or more, the following principles shall apply:

(a) If a borrower applies for a loan in a bona fide principal amount of less than the specified amount and a loan to that borrower of a bona fide principal amount of the specified amount or more is made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the bona fide principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more.

(b) A subsequent advance of money of less than a bona fide principal amount of the specified amount pursuant to a revolving or open-end loan agreement or similar agreement between a borrower and a licensed finance lender which gives the borrower the right to draw upon all or any part of the line of credit, or a loan agreement providing for the making of advances to the borrower from time to time up to an aggregate maximum amount which gives the borrower the right to draw all or any part of the total amount, shall be deemed to be a loan of a bona fide principal amount of the specified amount or more if the line of credit or the aggregate maximum amount is a bona fide principal amount of the specified amount or more and the initial advance was a bona fide principal amount of the specified amount or more even though the actual unpaid balance after the advance or at any other time is less than a bona fide principal amount of the specified amount.

(c) If a loan made by a licensed finance lender has a bona fide principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments, or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the bona fides of the amount thereof.

(d) For the purposes of this section, “the specified amount” means five thousand dollars (\$5,000).

(e) For the purposes of determining whether the loan amount exceeds a regulatory ceiling, the “bona fide principal amount” shall not be comprised of any charges or any other fees or recompense specified in Sections 22500, 22501, and 22601. Nothing in this subdivision shall be construed to prevent those specified charges, fees, and recompense that have been earned and remain unpaid in an existing loan from being considered as part of the bona fide principal amount of a new loan to refinance that existing loan, provided the new loan is not made for the purpose of circumventing a regulatory ceiling provision. This subdivision is intended to define the meaning of “bona fide principal amount” as used in this division solely for the purposes of determining whether the loan amount exceeds a regulatory ceiling, and is not intended to affect the meaning of “principal” for any other purpose.

(Amended by Stats. 1999, Ch. 347, Sec. 6. Effective January 1, 2000.)

ARTICLE 3. Loan Regulations [22600 - 22601]

(Article 3 added by Stats. 1994, Ch. 1115, Sec. 2.)

22600.

(a) A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

(b) For the purposes of this section, “institutional investor” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

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

(4) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however, that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.

(5) Any syndication or other combination of any of the foregoing that is organized to purchase the promissory note.

(6) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of undivided interests in, the right to receive payments from, or that are payable primarily from, a pool of financial assets held by the trust or business entity if all of the following apply:

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

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

(i) Interest bearing obligations.

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

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancements for these assets.

(C) The interests will be either of the following:

(i) Rated investment grade by Standard & Poor's Corporation or Moody's Investors Service, Inc.

"Investment grade" means that the securities will be rated by Standard & Poor's Corporation as AAA, AA, A, or BBB, or by Moody's Investor Service, Inc., as Aaa, Aa, A, or Baa, including a rating with a "+" or "-" designation or other variations that occur within these ratings.

(ii) Sold to an institutional investor as otherwise defined in this section.

(D) The offer and sale of the securities is qualified under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or is registered under federal securities laws, or is exempt from qualification or registration.

(c) In the absence of agreement to the contrary by the licensee and the institutional investor, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

(Amended by Stats. 1996, Ch. 672, Sec. 3. Effective January 1, 1997.)

22600.1.

(a) A licensee that is a finance lender may sell to (1) an institutional lender, or (2) an institutional investor described in paragraph (6) of subdivision (b) of Section 22600, promissory notes evidencing the obligation to repay real estate secured business purpose loans, as defined in Section 3500.5 of Title 24 of the Code of Federal Regulations, purchased from and made by an institutional lender, and may make agreements for the collection of payments and performance of services with respect to those notes. For purposes of this section, "institutional lender" means any bank, trust company, savings bank or savings and loan association, credit union, or industrial loan company doing business under the authority of and in accordance with a license, certificate or charter issued by the United States or this state.

(b) In the absence of agreement to the contrary by the licensee and the institutional investor or institutional lender, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

(Amended by Stats. 1998, Ch. 428, Sec. 3. Effective January 1, 1999.)

22601.

With respect to a loan under this division, a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft may be charged and collected by the licensee. The fee is not included in charges as defined in this division.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

ARTICLE 4. Open-End Credit Programs [22650- 22650.]

(Article 4 added by Stats. 1994, Ch. 1115, Sec. 2.)

22650.

As used in this division, “open-end credit program” means a licensee’s plan for making open-end loans pursuant to a loan agreement that sets forth the terms and conditions governing the use of the open-end credit program, expressly states that the loan is made pursuant to this article, and provides that:

- (a) The borrower may use the open-end credit program to obtain money, goods, labor, or services or credit, and the licensee makes open-end loans to the borrower for the purpose of paying money to, or at the direction of, the borrower or paying obligations that the borrower creates through use of the open-end credit program.
- (b) The amount of each advance and the charges and other permitted costs are debited to an account.
- (c) The charges are computed from time to time on the unpaid balances of the borrower’s account excluding from the computation any unpaid charges other than permitted fees, costs, and expenses.
- (d) The borrower has the privilege of paying the account in full at any time.

(Repealed and added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

CHAPTER 4. Revocation and Penalties [22700 - 22780]

(Chapter 4 added by Stats. 1994, Ch. 1115, Sec. 2.)

ARTICLE 1. Revocation and Suspension of License [22700 - 22718]

(Article 1 added by Stats. 1994, Ch. 1115, Sec. 2.)

22700.

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

(b) Mortgage loan originator licenses issued under this division shall be renewed annually upon the payment of an annual assessment, and if renewed by the licensee, shall remain in effect until they are surrendered, revoked, or suspended.

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

(Amended by Stats. 2009, Ch. 160, Sec. 43. Effective October 11, 2009.)

22701.

For the purpose of discovering violations of this division or securing information required by him or her in the administration and enforcement of this division, the commissioner may at any time investigate the loans and business, and examine the books, accounts, records, and files used in the business, of every person engaged in the business of a finance lender or broker, whether the person acts or claims to act as principal or agent, or under or without the authority of this division. For the purpose of examination, the commissioner and his or her representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all these persons.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22702.

In making any examination or investigation, the commissioner may, for a reasonable time not to exceed 30 days, take possession of the books, records, accounts, and other papers pertaining to the business. The commissioner may place a keeper in exclusive charge and custody of the books, records, accounts, and other papers in the office or place where they are usually kept. During possession, no person shall remove or attempt to remove any of the

books, accounts, papers, records, files, safes, and vaults, or any part thereof, except in compliance with a court order or written consent of the commissioner.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22703.

The officers, employees, partners, directors, and stockholders may inspect and examine the books, accounts, papers, records, files, safes, and vaults while they are in the custody of the commissioner. Employees may make entries in these documents reflecting current operations or transactions.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22704.

The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license issued by him or her.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22705.

Whenever the commissioner deems it necessary for the general welfare of the public, he or she has continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been surrendered, suspended, or revoked.

(Amended by Stats. 2002, Ch. 772, Sec. 17. Effective January 1, 2003.)

22705.1.

(a) For any licensee, a disciplinary action taken by the State of California, another state, an agency of the federal government, or another country for an action substantially related to the activity regulated under this division may be grounds for disciplinary action by the commissioner. A certified copy of the record of the disciplinary action taken against the licensee by the State of California, other state, agency of the federal government, or other country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude the commissioner from applying a specific statutory provision in this division providing for discipline against a licensee as a result of disciplinary action taken against a licensee by the State of California, another state, an agency of the federal government, or another country.

(Added by Stats. 2003, Ch. 473, Sec. 21. Effective January 1, 2004.)

22706.

The commissioner may require the attendance of witnesses and examine under oath all persons whose testimony he or she requires relative to loans or business regulated by this division or to the subject matter of any examination, investigation, or hearing.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22707.

(a) The cost of each examination of a licensee or a person subject to this division shall be paid to the commissioner by the licensee or person 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 an 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.

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

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22707.5.

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

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

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

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited licensee or person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(Added by Stats. 2013, Ch. 243, Sec. 3. Effective January 1, 2014.)

22708.

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

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22709.

The commissioner may require the production for examination in this state of all books, records, and supporting data used by the licensee in the preparation of reports to the commissioner. The books, records, and supporting data shall be made available for examination by the commissioner in this state within 10 days after a written demand.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22710.

The commissioner may upon three days' notice and a hearing, suspend any license for a period not exceeding 30 days, pending investigation.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22711.

Any licensee may surrender any license by delivering to the commissioner written notice that the licensee surrenders that license. Surrender of the license does not affect the licensee's civil or criminal liability for acts committed prior to surrender of the license.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22712.

(a) Whenever, in the opinion of the commissioner, any person is engaged in the business as a broker or finance lender, or a mortgage loan originator, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded. For purposes of this section, "licensee" includes a mortgage loan originator.

(b) Notwithstanding subdivision (a), if, after an investigation, the commissioner has reasonable grounds to believe that a person is conducting business in an unsafe or injurious manner, the commissioner shall, by written order addressed to that person, direct the discontinuance of the unsafe or injurious practices. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 22717.

(Amended by Stats. 2013, Ch. 243, Sec. 4. Effective January 1, 2014.)

22713.

(a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate a provision of this division, or a provision of any order, license, decision, demand, requirement, or any regulation adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action, or the commissioner may request the Attorney General to bring an action in the name of the people of the State of California, against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured

by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

(c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

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

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22714.

(a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(1) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(3) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(4) There has been repeated failure by the finance lender, when making or negotiating loans, to take into consideration in determining the size and duration of loans, the financial ability of the borrower to repay the loan in the time and manner provided in the loan contract, or to refinance the loan at maturity.

(b) A master license may not be suspended or revoked pursuant to this section as a result of any action or failure to act by a subsidiary licensee unless grounds exist for the suspension or revocation of the master license pursuant to this section. An order suspending or revoking a license or imposing sanctions against a licensee shall not affect other licensed locations unless expressly stated in the order.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22715.

The commissioner may by order summarily suspend or revoke the license of any licensee if that person fails to file the report required by Section 22159 within 10 days after notice by the commissioner that the report is due and not filed. If, after an order is made, a request for

hearing is filed in writing within 30 days and the hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22716.

The revocation, suspension, expiration, or surrender of any license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22717.

Except in cases in which the time for setting the hearing is shortened as provided in this division, the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all cases the commissioner has all the powers granted therein.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22718.

Every order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

ARTICLE 2. Consumer Loan Penalties [22750 - 22757]

(Article 2 added by Stats. 1994, Ch. 1115, Sec. 2.)

22750.

(a) If any amount other than, or in excess of, the charges permitted by this division is willfully charged, contracted for, or received, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a loan, whether by a licensee or by an unlicensed person subject to this division, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

(Amended by Stats. 2013, Ch. 467, Sec. 3. Effective January 1, 2014.)

22751.

(a) If any amount other than or in excess of the charges permitted by this division is charged or contracted for, or received, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the error the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error. *(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)*

22752.

(a) If any provision of this division is violated in the making or collection of a loan, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22753.

Any person who willfully violates any provision of this division or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority in Section 22713.

(Amended by Stats. 2011, Ch. 15, Sec. 112. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

22754.

No provision imposing liability under this division, including the provisions of subdivision (a) of Section 22751 and subdivision (a) of Section 22752, shall apply to any act done or omitted in good faith in conformity with any written general rule, regulation, or specific ruling of the commissioner, notwithstanding that after the act or omission has occurred, the written general rule, regulation, or specific ruling is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Added by Stats. 1994, Ch. 1115, Sec. 2. Effective January 1, 1995. Operative July 1, 1995, by Sec. 5 of Ch. 1115.)

22755.

It is a violation of this division for a mortgage loan originator to do any of the following:

- (a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.
- (b) Engage in any unfair or deceptive practice toward any person.
- (c) Obtain property by fraud or misrepresentation.
- (d) Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower.
- (e) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.
- (f) Conduct any business covered by this division without holding a valid license as required under this division, or assist or aide and abet any person in the conduct of business under this division without a valid license as required under this division.
- (g) Fail to make disclosures as required by this division and any other applicable state or federal law, including regulations thereunder.
- (h) Fail to comply with this division or rules or regulations promulgated under this division, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this division.
- (i) Make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.
- (j) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.
- (k) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any

appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

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

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

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

(Added by Stats. 2009, Ch. 160, Sec. 44. Effective October 11, 2009.)

22756.

Notwithstanding any other law, any application for licensure, amendment to the application or registration document or notice filed under any of the laws administered by the Department of Corporations, or record otherwise required to be filed in this state as an electronic record pursuant to a nationwide central depository for information regarding licensees, including mortgage loan originators, or any electronic record filed through the Nationwide Mortgage Licensing System and Registry, shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

(Added by Stats. 2012, Ch. 264, Sec. 6. Effective January 1, 2013.)

22757.

A finance lender, broker, or mortgage loan originator licensed under this division shall not pay any commission, fee, or other compensation to an unlicensed individual for conducting activities that require a license, unless that unlicensed individual is exempt from licensure pursuant to this division.

(Added by Stats. 2012, Ch. 264, Sec. 7. Effective January 1, 2013.)

ARTICLE 3. Commercial Loan Penalties [22780- 22780.]

(Article 3 added by Stats. 1994, Ch. 1115, Sec. 2.)

22780.

Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or

order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 22713.
(Amended by Stats. 2011, Ch. 15, Sec. 113. Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)