



SB-297 California Finance Lenders Law: regulation of lead generators. (2017-2018)

SECTION 1. (a) *It is the intent of the Legislature to amend the California Finance Lenders Law to recognize the existence of, and to regulate, persons whose function is limited to bringing parties to a loan transaction together so that those parties may negotiate their own loan contract, and to distinguish the acts of these persons from the acts of loan brokers. The term "lead generator," as used in this act, is intended to carry the same meaning as the term "finder," as used in Tyrone v. Kelley (1973) 9 Cal.3d 1, and other related court opinions.*

(b) *It is the intent of the Legislature that the definitions in this act be liberally construed to further the purposes of the act.*

(c) *Nothing in this act is intended to extend the scope or coverage of the California Finance Lenders Law to any entity currently exempt under California or federal law from licensing under the California Finance Lenders Law, nor to extend the scope of the Finance Lenders Law to any transaction not currently subject to that law.*

SEC. 2. *Section 22009.5 is added to the Financial Code, to read:*

22009.5. *"Finance broker" means any person who brings a prospective borrower and a finance lender together, and who is engaged in the business of performing one or both of the following activities for compensation, or in expectation of compensation, from a finance lender or borrower:*

(a) *Matching a prospective borrower with a finance lender, using information provided by both parties.*

(b) *Negotiating the price, length, or any other loan term between a finance lender and a prospective borrower.*

SEC. 3. *Section 22010.5 is added to the Financial Code, to read:*

22010.5. *"Lead generator" means any person who, for compensation or in expectation of compensation, helps facilitate a loan subject to this division by performing one or more of the following activities for another or others:*

(a) *Soliciting or collecting nonpublic personal information, such as social security number, tax identification number, bank account number, bank routing number, or other nonpublic personal information, from prospective borrowers in anticipation of selling or submitting the information to one or more finance lenders.*

(b) *Introducing prospective borrowers and prospective lenders after comparing prospective borrowers' attributes with prospective lenders' preferences, in anticipation of compensation by prospective lenders.*

(c) *Offering to the public a means through which the lead generator compiles and publishes comparison information on various loans made pursuant to this division, including services that allow borrowers to contact finance lenders through links on the lead generator's Internet Web site or comparable technological means.*

(d) *Soliciting or collecting nonpublic personal information from prospective borrowers in anticipation of selling or submitting that information to one or more lead generators.*

(e) *Purchasing, soliciting, or otherwise acquiring nonpublic personal information from a lead generator in anticipation of selling or submitting that information to one or more finance lenders.*

SEC. 4. *Section 22010.6 is added to the Financial Code, to read:*

22010.6. *The following shall not be deemed to be finance brokers or lead generators and may engage in the activities specified below in connection with loans subject to this division, without the requirement for licensure or regulation pursuant to this division:*

(a) A person who is not engaged in the business of a broker or a lead generator, and whose activities in connection with the introduction of prospective borrowers and prospective lenders regarding loans subject to this division are performed on no more than an occasional basis.

(b) A person who disseminates, places, posts, or distributes advertising or promotional information or materials pertaining to loans on behalf of licensees and does not otherwise engage in the activities of a broker or a lead generator.

(c) A person providing financial education or information of a general nature to a prospective borrower.

(d) A credit reporting agency that furnishes a consumer credit report to a finance lender.

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

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 ~~(e)~~ (d).

(b) Each registered lead generator shall pay to the commissioner its pro rata share of all costs and expenses 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 division in the year in which the assessment is made.

~~(b)~~ (c) On or before the 30th day of September in each year, the commissioner shall notify each licensee *and each registrant* 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.

~~(e)~~ (d) 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.

~~(e)~~ (e) 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)~~ (f) 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 *and for lead generator registrations and registration renewals* under this division.

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

SEC. 6. Section 22112 of the Financial Code is amended to read:

22112. (a) ~~A~~ Each licensee *and registrant* 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,~~ *locations or registrants with multiple locations of business,* 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 *or registrant's* bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee *or registrant* 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.

SEC. 7. *Section 22113 is added to the Financial Code, to read:*

22113. (a) *No person may engage in the business of a lead generator without first registering as a lead generator with the commissioner.*

(b) *An application for registration as a lead generator under this division shall be in the form and contain the information the commissioner may by rule or order require. The following information shall be required of applicants for registration, at a minimum:*

(1) *The name, business address, and licensing details, if applicable, of the lead generator and all physical locations and Internet Web site addresses from which the lead generator will engage in activities subject to this division.*

(2) *The name and contact information for an employee of the lead generator who is knowledgeable about, and has the authority to execute, the contract governing the business relationship between the lead generator and lenders subject to this division.*

(3) *The name and contact information for one or more employees of the lead generator who are responsible for that lead generator's activities subject to this division.*

(4) *A list of the activities the lead generator will perform subject to this division.*

(c) *The commissioner shall, by rule, establish the timelines and fees applicable to applicants for original lead generator registrations and annual renewals.*

(d) *If a registered lead generator fails to pay a required fee or assessment by the due date specified by the commissioner, the commissioner may by order summarily suspend or revoke the lead generator's registration. 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 registration is revoked or suspended, a lead generator 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 registration shall not affect the powers of the commissioner as provided in this division.*

SEC. 8. *Section 22114 is added to the Financial Code, to read:*

22114. (a) *Upon reasonable notice and opportunity to be heard, the commissioner may deny an application for a registration as a lead generator for either of the following reasons:*

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

(2) *The commissioner has grounds to believe that approval is likely to result in harm to the public.*

(b) *An application for registration as a lead generator shall be considered withdrawn 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 registration with the required fees, either issue a registration 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. If the commissioner fails to issue a registration or file a statement of issues within 60 days from the filing of a full and complete application for a registration with the required fees, an applicant for registration may operate provisionally, until the time the commissioner issues a registration or files a statement of issues.*

~~**SEC. 6.**~~ **SEC. 9.** *Section 22152 of the Financial Code is amended to read:*

22152. (a) 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.

(b) The location at which a registered lead generator engages in activities subject to the provisions of this division shall not be considered a place of business of a licensee that consummates a loan with a borrower using the services of that lead generator, unless that licensee otherwise engages in business at that location.

SEC. 7. SEC. 10. Section 22157 of the Financial Code is amended to read:

22157. (a) 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.

(b) Each finance lender that utilizes the services of a lead generator shall maintain records of its dealings with that lead generator, including agreements, contracts, books, accounts, and records, for at least three years following the creation of those documents.

(c) Each lead generator that is compensated by a lender licensed under this division shall maintain records related to its lead generation activities for at least three years following the creation of those documents.

(d) Subdivisions (b) and (c) shall not be deemed to require the maintenance or storage of personal identification information for any borrower; however, each lead generator that does not maintain or store personal identification information shall have a method by which the identity of individual borrowers can be reconstructed, if requested by the commissioner.

(e) It shall be a violation of this division to compensate a lead generator in connection with any services provided by that lead generator, or in connection with the referral of any borrower or prospective borrower by that lead generator, where the lead generator has made any materially false or misleading statement to a borrower or prospective borrower or has engaged in any unlawful, deceptive, misleading, or unfair act or practice in connection with that service or loan.

SEC. 11. Section 22159 of the Financial Code is amended to read:

22159. (a) Each finance lender and broker licensee *and each lead generator registrant* 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 *or registrant* 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 *or registrant* 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).

SEC. 8. SEC. 12. Section 22161 of the Financial Code is amended to read:

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) Make a materially false or misleading statement or representation to a prospective borrower about the terms or conditions of a loan for which a prospective borrower may qualify, when engaging in lead generation activities.

~~(b)~~ (c) 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)~~ (d) Commit an act in violation of Section 1695.13 of the Civil Code.

~~(d)~~ (e) Engage in any act in violation of Section 17200 of the Business and Professions Code.

~~(e)~~ (f) 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)~~ (g) Commit an act that constitutes fraud or dishonest dealings.

SEC. 9. SEC. 13. Section 22168 of the Financial Code is amended to read:

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 *or a registered lead generator* 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, *or a registered lead generator*, and from engaging in any business activity on the premises where a licensed finance lender, broker, ~~or~~ mortgage loan ~~originator~~ *originator, or a registered lead generator* 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.

SEC. 10. SEC. 14. Section 22169 of the Financial Code is amended to read:

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, *lead generator*, 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 *lead generator, 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, *or lead generator*, and from engaging in any business activity on the premises where a finance lender, broker, ~~or~~ mortgage loan ~~originator~~ *originator, or lead generator* is conducting business.

SEC. 15. *Section 22173 is added to the Financial Code, to read:*

22173. *A licensee may compensate a registered lead generator for engaging in lead generation activities, subject to all of the following requirements:*

(a) Each licensee wishing to engage the services of a lead generator shall enter into a written agreement with that lead generator clearly describing the services to be performed.

(b) Each agreement between a licensee and a lead generator shall include provisions requiring the lead generator to do all of the following:

(1) Register with the commissioner in accordance with this division.

(2) Comply with applicable provisions of this division and with rules promulgated and orders issued by the commissioner to implement those provisions.

(3) Retain and produce records of all transactions conducted with California residents as required by Section 22157.

(c) A licensee that compensates lead generators shall not charge any of its borrowers a fee attributable to the licensee's costs of lead generation.

(d) A licensee shall not compensate a lead generator that is not registered pursuant to this division in connection with a loan made pursuant to this division.

SEC. 16. *Section 22173.5 is added to the Financial Code, to read:*

22173.5. *(a) Each licensee that uses the services of a lead generator shall develop and implement policies and procedures reasonably intended to do all of the following:*

(1) Exercise oversight over the business practices and advertising and marketing claims of the lead generator.

(2) Monitor borrower complaints about the lead generator.

(3) Ensure the lead generator's compliance with the provisions of this division.

(4) Refrain from using leads generated through false, misleading or deceptive business or advertising practices.

(b) A licensee that pays compensation to a lead generator in connection with a loan offered pursuant to this division shall be subject to discipline by the commissioner in connection with any misrepresentation made or deceptive act or practice engaged in by that lead generator in connection with that loan.

(c) Nothing in this division is intended to authorize any conduct that is subject to subdivision (a) of Section 23005, or that is otherwise prohibited by any provision of this division or other law of this state or the federal government.

SEC. 17. *Section 22174 is added to the Financial Code, to read:*

22174. (a) Each lead generator shall develop and implement policies and procedures to respond to questions raised by borrowers and prospective borrowers and to address complaints from borrowers and prospective borrowers as soon as reasonably practicable.

(b) At the time a lead generator receives an inquiry or application from a borrower for a loan subject to this division, the lead generator shall provide the following statement to the borrower in no smaller than 10-point type, or electronically in a similarly clear and conspicuous manner, a form that allows the statement to be printed and shall ask the borrower to acknowledge receipt of the statement:

"You are not submitting your information directly to a lender. [Name of lead generator] is a lead generator registered with the California Department of Business Oversight. We may disclose or sell your information to one or more lenders or other lead generators, at no direct cost to you, with the goal of helping you obtain the financing you are seeking. We also may be compensated in exchange for featured placement of certain sponsored products and services, or for your clicking on certain links posted on an Internet Web site. You may receive separate communications from one or more lenders based on the information we have collected from you. The financing you are offered may not be the best fit for you or provide you with the most favorable loan terms for your circumstances. It is your responsibility to evaluate any loan you may be offered and determine if it is right for you. If you have questions about the services we perform, you may contact us at [telephone number or email address at which lead generator may be reached]. If you wish to report a complaint about [Name of lead generator], you may contact the Department of Business Oversight at 866-275-2677, or file your complaint online at www.dbo.ca.gov."

(c) At the time a lender licensed under this division approves an application for a loan subject to this division from a borrower who has been referred to it directly by a lead generator, the lender shall provide the following statement to the borrower in no smaller than 10-point type, or electronically in a similarly clear and conspicuous manner in a form that allows that statement to be printed, and shall ask the borrower to acknowledge receipt of the statement:

"[Name of licensed lender], a lender licensed under the California Finance Lenders Law, has approved you for a loan based on information you provided to a third party working on our behalf. The details of the loan we are prepared to extend to you are described in accompanying documents. IF YOU ACCEPT THE LOAN, [NAME OF LICENSED LENDER] WILL BECOME YOUR LENDER. We may compensate the third party from which we obtained your information for their services in referring you to us. If you have any questions about your loan, now or in the future, you should direct those questions to us by [insert at least two different ways in which a borrower may contact the lender]. If you wish to report a complaint regarding this loan transaction, you may contact the Department of Business Oversight at 866-275-2677, or file your complaint online at www.dbo.ca.gov."

(d) If a loan applicant directs questions about a loan to a lead generator, which the lead generator is not permitted to answer, the lead generator shall make a good faith effort to assist the applicant in making direct contact with the lender before the loan is consummated. This good faith effort shall, at a minimum, consist of assisting the applicant in communicating with the licensee as soon as reasonably practicable, which shall at a minimum include a two-way communication. For purposes of this section, "two-way communication" means telephone, electronic mail, or another form of communication that allows the applicant to communicate with the lender.

(e) A licensee that uses the services of one or more lead generators shall develop and implement policies and procedures to respond to questions raised by prospective borrowers and borrowers about loans made using lead generators and to address customer complaints as soon as reasonably practicable.

(f) A licensee that uses the services of one or more lead generators shall not treat a loan as consummated or fund a loan until the licensee has completed a two-way communication with the prospective borrower. Sending a voicemail or electronic message to the applicant, without a prior or subsequent response from the prospective borrower, shall not constitute a two-way communication.

SEC. 18. Section 22175 is added to the Financial Code, to read:

22175. (a) A lead generator shall comply with all laws, rules, and orders applicable to licensees under this division, which impose requirements regarding the duty to safeguard nonpublic personal information, including,

but not limited to, the California Financial Information Privacy Act (Division 1.4 (commencing with Section 4050)).

(b) A lead generator shall not solicit or collect nonpublic personal information from or about a consumer unless that nonpublic personal information is reasonably necessary to perform the activities set forth in Section 22010.5.

SEC. 19. Section 22176 is added to the Financial Code, to read:

22176. A lead generator shall not do any of the following:

(a) Engage in the business of a lead generator without first registering as a lead generator in accordance with Section 22113.

(b) Enter into a written agreement with a licensee that is not in good standing with the commissioner at the time that agreement is signed or with an unlicensed person that is subject to a final desist and refrain order for engaging in unlicensed activities at the time that agreement is signed.

(c) Provide marketing materials that are specific to a lender or a lender's specific loan offerings without prior approval of the material substance of those materials by that lender.

(d) Engage in unsolicited door-to-door or telephonic contact with prospective borrowers.

(e) Make a materially false or misleading statement or representation to a prospective borrower about the terms or conditions of a loan for which the prospective borrower may qualify, when engaging in lead generation activities.

(f) Use or disclose to any third party a prospective borrower's nonpublic personal information without first obtaining the borrower's consent, except as provided in the California Financial Information Privacy Act.

~~SEC. 15.~~ **SEC. 20.** Section 22700 of the Financial Code is amended to read:

22700. (a) Finance lender and broker licenses *and lead generator registrations* 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 *or registration* becomes effective 30 days after receipt of an application to surrender the license *or registration 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 *or registration* becomes effective at the time and upon the conditions that the commissioner determines.

~~SEC. 16.~~ **SEC. 21.** Section 22701 of the Financial Code is amended to read:

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,~~ *lender, broker, or lead generator* 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.

~~SEC. 17.~~ **SEC. 22.** Section 22704 of the Financial Code is amended to read:

22704. The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license *or registration* issued by him or her.

~~SEC. 18.~~ **SEC. 23.** Section 22705 of the Financial Code is amended to read:

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 *or registration* has been filed with the commissioner, any license *or registration* has been issued, or if issued, has been surrendered, suspended, or revoked.

~~SEC. 19.~~**SEC. 24.** Section 22707 of the Financial Code is amended to read:

22707. (a) The cost of each examination of a ~~licensee or a~~ *licensee, lead generator, or other* person subject to this division shall be paid to the commissioner by the ~~licensee~~ *licensee, lead generator,* 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~~ *licensees, lead generators,* 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 *or a lead generator* 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.

~~SEC. 20.~~**SEC. 25.** Section 22707.5 of the Financial Code is amended to read:

22707.5. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a ~~licensee~~ *licensee, lead generator,* 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~~ *person, lead generator, or licensee* 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 *or lead generator* 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~~ *person, lead generator,* 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~~ *licensee, lead generator,* 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~~ *licensee, lead generator,* 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.

~~SEC. 21.~~**SEC. 26.** Section 22710 of the Financial Code is amended to read:

22710. The commissioner may upon three days' notice and a hearing, suspend any license *or registration* for a period not exceeding 30 days, pending investigation.

~~SEC. 22.~~**SEC. 27.** Section 22711 of the Financial Code is amended to read:

22711. Any licensee may surrender any ~~license~~ *license, and any lead generator may surrender a registration*, by delivering to the commissioner written notice that the licensee *or lead generator* surrenders that ~~license, license or registration~~. Surrender of the license *or registration* does not affect the licensee's *or lead generator's* civil or criminal liability for acts committed prior to surrender of the ~~license, license or registration~~.

~~SEC. 23.~~SEC. 28. Section 22712 of the Financial Code is amended to read:

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 as a lead generator, as defined in this division, without a registration from the commissioner, or any licensee or lead generator~~ violates any provision of this division, any provision of an order, or any regulation adopted pursuant to this division, the commissioner may order that ~~person or licensee~~ *person, licensee, or lead generator* to desist and to refrain from engaging in the business or further continuing that violation. 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.

~~SEC. 24.~~SEC. 29. Section 22714 of the Financial Code is amended to read:

22714. (a) The commissioner shall suspend or revoke any ~~license,~~ *license or registration* upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(1) The licensee *or registrant* 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 *or registrant* 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,~~ *license or registration* reasonably would have warranted the commissioner in refusing to issue the license *or registration* 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 *registration or* imposing sanctions against a licensee *or registrant* shall not affect other licensed *or registered* locations unless expressly stated in the order.

~~SEC. 25.~~SEC. 30. Section 22757 of the Financial Code is amended to read:

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 *or is a registered lead generator* pursuant to this division.

SEC. 31. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*