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AB-38 Student loan servicers: licensing and regulation: Student Loan Servicing Act. (2017-2018)

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Date Published: 09/17/2018 09:00 PM

Assembly Bill No. 38

CHAPTER 379

An act to amend Sections 28102, 28104, 28106, 28110, 28114, 28116, 28120, 28122, 28128, 28130, 28134, 28136, 28142, 28144, and 28154 of, to add Sections 28111, 28117, 28153, and 28153.5 to, and to add Article 3 (commencing with Section 28125) to Chapter 2 of Division 12.5 of, the Financial Code, relating to student loan servicers.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 38, Mark Stone. Student loan servicers: licensing and regulation: Student Loan Servicing Act.

Existing law, operative July 1, 2018, establishes the Student Loan Servicing Act to provide for the licensure, regulation, and oversight of student loan servicers by the Commissioner of Business Oversight, who is the head of the Department of Business Oversight. The act prohibits a person from engaging in the business of servicing a student loan in this state without a license, unless the person falls within certain exceptions. Under the act, a person applying for a license, among other things, is required to pay an application fee, sign the application under penalty of perjury, and submit to a criminal background check by the Department of Justice. The act authorizes the commissioner to deny an application for a license for specified reasons. The act also authorizes the commissioner to promulgate regulations and take various other administrative actions. The act defines various terms for its purposes, and excludes specified entities, including banks, trust companies, and certain nonprofit community service organizations from its provisions.

This bill would revise and recast the circumstances under which the commissioner is authorized to deny an application for a license. The bill would require an applicant to appoint the commissioner as the applicant's attorney to receive service of process relating to specified actions and would require the service to include an affidavit of compliance. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would redefine the term "student loan" under the act to mean any loan solely for use to finance a postsecondary education and costs of attendance at a postsecondary institution and would redefine "student loan servicers" to exclude debt collectors whose business operations involve collection on defaulted student loans, as specified. In addition to other terms, the bill would define the term "Nationwide Multistate Licensing System & Registry" to mean certain systems of records, created for nondepository, financial services licensing or registration, including student loan servicers, as specified. The bill would exclude from the act a state or nonprofit private institution or organization having an agreement with the United States Secretary of Education, in connection with its responsibilities as a guaranty agency engaged in default aversion, pursuant to specific federal student loan provisions. The bill would also authorize the commissioner to require an applicant for a student loan servicer license or a student loan servicer licensee to make some or all of the required filings with, and to pay assessments to, the commissioner through the Nationwide Multistate Licensing System & Registry.

This bill would authorize the commissioner to establish relationships or contracts with the Nationwide Multistate Licensing System & Registry or other designated entities to collect and maintain records and process transaction fees. The bill would authorize the commissioner, for purposes of participating in the licensing system and registry, to waive or modify rules, regulations, orders, and

other requirements as reasonably necessary. The bill would permit the commissioner to use the system and registry as a channeling agent for requesting information from the Department of Justice and other sources, and would require the commissioner to establish a process by which applicants and licensees may challenge information entered into the licensing system and registry. Additionally, the bill would specify that any of various federal or state law requirements regarding the privacy or confidentiality of any information provided to the licensing system and registry, or privilege with respect to that information, would continue to apply, and that this information is authorized to be shared under the system without the loss of privilege or confidentiality. The bill would require the commissioner to report violations of the act, as well as other enforcement actions and information to the licensing system and registry to the extent that the information is a public record.

The act permits the commissioner to prescribe circumstances under which to accept electronic records, including applications, financial statements, reports, and other specified documents.

This bill would include within that category of electronic records a surety bond, rider, or endorsement.

Under the act, a licensee is required to respond to a qualified written request by acknowledging receipt of the request within 5 business days, as specified.

This bill would extend that timeframe to 10 business days. The bill additionally would authorize the commissioner to require persons who are not expressly excluded from the act to file, under oath or otherwise, special reports or answers in writing to specific questions or requests for information with the commissioner. The bill would provide that in any proceeding under the act, the burden of proving an exemption or an exception from a definition would be on the person claiming it. By increasing the circumstances in which a person may be required to take an oath, the bill would expand the crime of perjury, thereby imposing a state-mandated local program.

This bill would make legislative findings in support of its provisions and would also make related and conforming changes to the act.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Student loan debt has created a national crisis, with over 40,000,000 people in the United States owing some amount of student loan debt. Total student educational debt in the United States exceeds one trillion two hundred billion dollars (\$1,200,000,000,000), exceeding both the total amount of credit card and car loan debt.

(2) Currently, more than 40 percent of student borrowers are not making payments on their student loans. About one in six borrowers are in default, meaning they have gone a least a year without making a payment. The Consumer Finance Protection Bureau (hereafter CFPB) has found that one in three borrowers will redefault within two years. Servicing delays associated with income-driven loan forgiveness programs are predicted to cause over 200,000 borrowers to redefault within the next two years.

(3) Even though California's financial aid programs are some of the nation's strongest, our state's college graduates still incur significant debt. According to the United States Department of Education, as of January 2015, there were approximately 4,156,000 student educational loan borrowers in California, and the total student educational loan debt outstanding for Californians was about one billion two hundred million dollars (\$1.2 billion).

(4) Student educational loan debt is a drag on the state's economy, preventing borrowers from achieving financial independence, buying property, and starting businesses.

(5) Student educational loan servicers administer student loans, serving as a critical link between borrowers and lenders in managing accounts, processing payments, and communicating directly with borrowers.

(6) The CFPB has continued to find that student loan borrowers encounter servicers that discourage borrower-friendly alternative payment plans, fail to respond to questions and payment processing errors, and fail to provide sufficient information to borrowers regarding payments, benefits, interest rates, and other charges.

(7) With the increasingly uncertain federal landscape, it is now more important than ever to ensure California student loan borrowers will be given meaningful access to federal affordable repayment options and loan forgiveness benefits, reliable information, and quality customer service and fair treatment.

(b) Therefore, it is the intent of the Legislature to do the following:

(1) Build upon existing law to ensure that the Student Loan Servicing Act's goals are met as the federal government enacts new regulations.

(2) Work with advocates, departments, and industry to create a smooth transition into the program.

SEC. 2. Section 28102 of the Financial Code is amended to read:

28102. (a) No person shall engage in the business of servicing a student loan in this state without first obtaining a license pursuant to this division. A license shall not be transferable or assignable.

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

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

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

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

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

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

(6) In connection with its responsibilities as a guaranty agency engaged in default aversion, a state or nonprofit private institution or organization having an agreement with the United States Secretary of Education under Section 428(b) of the Higher Education Act of 1965 (20 U.S.C. Sec. 1078(b)).

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

SEC. 3. Section 28104 of the Financial Code is amended to read:

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

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

(b) "Borrower" means either of the following:

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

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

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

(d) "Default aversion" means those activities in which guaranty agencies engage to prevent default by a borrower pursuant to the law and regulations of the Federal Family Education Loan Program.

(e) "Department" means the Department of Business Oversight.

(f) "Engage in the business" means, without limitation, servicing student loans.

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

(h) "Licensee" means a person licensed pursuant to this division.

(i) "Nationwide Multistate Licensing System & Registry" means a system of record, created by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, for nondepository, financial services licensing or registration, including student loan servicers, in participating state agencies, the District of Columbia, Puerto Rico, the United States Virgin Islands, and Guam.

(j) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a trust, an unincorporated organization, a government, or a political subdivision of a government, and any other entity.

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

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

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

(l) "Servicing" means any of the following activities related to a student loan of a borrower:

(1) Performing both of the following:

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

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

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

(A) Maintaining account records for the student loan.

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

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

(m) (1) "Student loan" means any loan made solely for use to finance a postsecondary education and costs of attendance at a postsecondary institution, including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses. A "student loan" includes a loan made to refinance a student loan.

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

(B) A "student loan" shall not include an extension of credit made by a postsecondary educational institution to a borrower if one of the following applies:

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

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

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

(n) "Student loan servicer" means any person engaged in the business of servicing student loans. A "student loan servicer" does not include a debt collector, as defined in Section 1788.2 of the Civil Code, whose student loan debt collection business, and business operations, involve collecting, or attempting to collect, on defaulted student loans, that is, federal student loans for which no payment has been received for 270 days or more, or private student loans, in default, according to the terms of the loan

documents. Debt collectors who also service nondefaulted student loans, as part of their business, and business operations, are “student loan servicers.”

SEC. 4. Section 28106 of the Financial Code is amended to read:

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

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

- (1) To issue or refuse to issue a license as provided by this division.
- (2) To revoke or suspend for cause any license as provided by this division.
- (3) To keep records of licenses issued under this division.
- (4) To receive, consider, investigate, and act upon complaints made in connection with a licensee.
- (5) To prescribe the forms of and receive (A) applications for licenses and (B) reports, books, and records required to be made by a licensee under this division, including annual audited financial statements.
- (6) To subpoena documents and witnesses and compel their attendance and production, to administer oaths, and to require the production of books, papers, or other materials relevant to any inquiry authorized by this division.
- (7) To require information with regard to an applicant that the commissioner may deem necessary, with regard for the paramount public interest in ascertaining the experience, background, honesty, truthfulness, integrity, and competency of an applicant for servicing student loans, and if an applicant is an entity other than an individual, in ascertaining the honesty, truthfulness, integrity, and competency of officers, directors, or managing members of the corporation, association, or other entity, or the general partners of a partnership.
- (8) To enforce by order any provision of this division.
- (9) To levy fees, fines, and charges in an amount sufficient to cover the cost of the services performed in administering this division.
- (10) To appoint examiners, attorneys, supervisors, experts, and special assistants as needed to effectively and efficiently administer this division.

SEC. 5. Section 28110 of the Financial Code is amended to read:

28110. (a) 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 be deemed to require the commissioner to accept electronic records or electronic signatures.

(b) 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, report, or advertising.
 - (C) A surety bond, rider, or endorsement thereto.
 - (D) An order, license, consent, or other authority.
 - (E) A notice of public hearing, accusation, and statement of issues in connection with any application, license, consent, or other authority.
 - (F) A proposed decision of a hearing officer and a decision of the commissioner.
 - (G) The transcripts of a hearing and correspondence between a party and the commissioner directly relating to the record.
 - (H) A release, newsletter, interpretive opinion, determination, or specific ruling.

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

(c) 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.

SEC. 6. Section 28111 is added to the Financial Code, to read:

28111. (a) The commissioner may require an applicant for a student loan servicer license or a student loan servicer licensee to make some or all of the filings with the commissioner through the Nationwide Multistate Licensing System & Registry.

(b) The commissioner may require an application to be made through the Nationwide Multistate Licensing System & 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 by applicants and licensees through the Nationwide Multistate Licensing System & Registry.

(c) The commissioner may require licensees to pay assessments through the Nationwide Multistate Licensing System & Registry.

SEC. 7. Section 28114 of the Financial Code is amended to read:

28114. (a) The commissioner shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of every applicant for a license 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 transmit fingerprint images and related information received pursuant to this section to the Federal Bureau of Investigation for the purpose of obtaining a federal criminal history records check. 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 the license applicant described in subdivision (a).

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

SEC. 8. Section 28116 of the Financial Code is amended to read:

28116. (a) Upon the filing of an application for a license pursuant to Section 28112 and the payment of the fees, the commissioner shall investigate the applicant and its general partners and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any individual responsible for the conduct of the applicant's servicing 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, trustee, managing members, and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any individual responsible for the conduct of the applicant's servicing activities in this state.

(b) Upon the filing of an application for a license pursuant to Section 28128 and the payment of the fees, the commissioner shall investigate the individual responsible for the servicing 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, the commissioner shall issue and deliver a license to the applicant.

(c) 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 servicing activities in this state.

SEC. 9. Section 28117 is added to the Financial Code, to read:

28117. (a) Before an applicant is issued a license, the applicant shall file with the commissioner, in such form as the commissioner may require, an appointment irrevocably appointing the commissioner to be the applicant's or licensee's attorney, to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the applicant or licensee, or any of its successors, that arises under this division or under any regulation or order issued under this division after such appointment has been filed, with the same force and validity as if served personally on the applicant, licensee, or successor.

(b) Service may be made by leaving a copy of the process at any office of the commissioner, but that service is not effective unless (1) the party making that service, who may be the commissioner, sends notice of service and a copy of the process by registered or certified mail to the party served at its last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 10. Section 28120 of the Financial Code is amended to read:

28120. (a) 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.

(b) The commissioner may deny an application for a 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 any principal officer, director, general partner, managing member, or individual owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, within the last 10 years has (A) been convicted of, or pleaded nolo contendere to, a crime or (B) committed any 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 any principal officer, director, general partner, managing member, or individual owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated, or is not in material compliance with this division, or an order or rule of the commissioner.

(4) A material requirement for issuance of a license has not been met.

(5) The applicant or any principal officer, director, general partner, managing member, or individual owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has violated this division or the rules thereunder, or any similar regulatory scheme of this or a foreign jurisdiction.

(6) The applicant or any principal officer, director, general partner, managing member, or individual owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, has been held liable in any civil action by final judgment or any administrative judgment by any public agency within the past seven years.

(7) The commissioner, based on its investigation of the applicant, is unable to find that the financial responsibility, criminal records, experience, character, and general fitness of the applicant and its general partners, managing members, principal officers and directors, and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant, support a finding that the business will be operated honestly, fairly, efficiently, and in accordance with the requirements of this division.

SEC. 11. Section 28122 of the Financial Code is amended to read:

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

(b) The commissioner shall notify the applicant, in writing, that if the applicant fails to submit responsive information within 60 days from the date the commissioner sent the written request for information, the commissioner shall deem the application abandoned.

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

SEC. 12. Article 3 (commencing with Section 28125) is added to Chapter 2 of Division 12.5 of the Financial Code, to read:

Article 3. Nationwide Multistate Licensing System & Registry

28125. (a) The commissioner is authorized to establish relationships or contracts with the Nationwide Multistate Licensing System & Registry or other entities designated by the Nationwide Multistate Licensing System & 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 Multistate Licensing System & 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 Multistate Licensing System & Registry.

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

(d) The commissioner shall establish a process through which applicants and licensees may challenge information entered into the Nationwide Multistate Licensing System & Registry by the commissioner.

28125.1. (a) Except as otherwise provided in Section 1512 of the SAFE Act (12 U.S.C. Sec. 5111(a)), the requirements under any federal law or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) regarding the privacy or confidentiality of any information or material provided to the Nationwide Multistate Licensing System & Registry, and any privilege arising under federal or state law, including the rules of any 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 Multistate Licensing System & Registry. The information and material may be shared with all state and federal regulatory officials with industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Information Practices Act.

(b) 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 Multistate Licensing System & 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 that person, that privilege.

(c) 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 included in, the Nationwide Multistate Licensing System & Registry for access by the public.

28125.2. The commissioner shall report regularly violations of this division, as well as enforcement actions and other relevant information, to the Nationwide Multistate Licensing System & Registry, to the extent that the information is a public record.

SEC. 13. Section 28128 of the Financial Code is amended to read:

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

(b) The licensee may engage in the business of servicing student loans 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 individual responsible for the servicing activity of the licensee at the new location in accordance with Article 2 of Chapter 2 (commencing with Section 28112), 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 individual responsible for the servicing activity of the licensee at the new location. The commissioner shall approve or deny the different individual as provided in paragraph (1).

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

(e) A branch office license to engage in the business of servicing 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 28126 and shall not constitute a new location subject to the requirements of this section.

SEC. 14. Section 28130 of the Financial Code is amended to read:

28130. A licensee shall do all of the following:

- (a) Develop policies and procedures reasonably intended to promote compliance with this division.
- (b) File with the commissioner any report required by the commissioner.
- (c) Comply with the provisions of this division and any regulation or order of the commissioner.
- (d) Submit to periodic examination by the commissioner as required by this division and any regulation or order of the commissioner.
- (e) Advise the commissioner of filing a petition for bankruptcy within five days of the filing.
- (f) Provide, free of charge on its Internet Web site, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers and provide this information or these links to borrowers via written correspondence or email at least once per calendar year.
- (g) (1) Respond to a qualified written request by acknowledging receipt of the request within 10 business days and within 30 business days, provide information relating to the request and, if applicable, the action the licensee will take to correct the account or an explanation for the licensee's position that the borrower's account is correct.
 - (2) The 30-day period described in paragraph (1) may be extended for not more than 15 days if, before the end of the 30-day period, the licensee notifies the borrower of the extension and the reasons for the delay in responding.
 - (3) After receipt of a qualified written request related to a dispute on a borrower's payment on a student loan, a licensee shall not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the qualified written request.
- (h) (1) Except as provided in federal law or required by a student loan agreement, a licensee shall inquire of a borrower how to apply an overpayment to a student loan. A borrower's direction on how to apply an overpayment to a student loan shall stay in effect for any future overpayments during the term of a student loan until the borrower provides different directions.
 - (2) For purposes of this subdivision, "overpayment" means a payment on a student loan in excess of the monthly amount due from a borrower on a student loan, also commonly referred to as a prepayment.

SEC. 15. Section 28134 of the Financial Code is amended to read:

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

- (1) The identity of the new student loan servicer and the number of the license of the new student loan servicer issued by the commissioner.
 - (2) The name and address of the new student loan servicer to whom subsequent payments or communications are required to be sent.
 - (3) The telephone numbers and Internet Web sites of the new student loan servicer.
 - (4) The effective date of the sale, assignment, or transfer.
 - (5) The date on which the licensee, as the current student loan servicer, will stop accepting payments on the borrower's student loan.
 - (6) The date on which the new student loan servicer will begin accepting payments on the borrower's student loan.
- (b) A licensee shall transfer all information regarding a borrower, a borrower's account, and a borrower's student loan to the new licensee servicing the borrower's student loan within 45 calendar days of the effective date of the sale, assignment, or transfer.

SEC. 16. Section 28136 of the Financial Code is amended to read:

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

- (a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead a borrower.
- (b) Engage in any unfair or deceptive practice toward any borrower or misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the student loan agreement, or the borrower's obligations under the student loan.
- (c) Misapply payments made by a borrower to the outstanding balance of a student loan.
- (d) If the licensee is required to or voluntarily reports to a consumer reporting agency, fail to accurately 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 subdivision, 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)).
- (e) Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided the licensee may adopt reasonable procedures for verifying that the representative is in fact authorized to act on behalf of the borrower and for protecting the borrower from fraud or abusive practices.
- (f) Negligently or intentionally make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with the commissioner, the department, or another governmental agency.

SEC. 17. Section 28142 of the Financial Code is amended to read:

28142. (a) A licensee shall maintain a surety bond in accordance with this section 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. The 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 as the result of a licensee's noncompliance with the requirements of this division. The commissioner may require licensees to submit bonds, riders, and endorsements electronically through the Nationwide Multistate Licensing System & Registry's electronic surety bond function.

(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 require a higher bond amount for a licensee based on the dollar amount of servicing of student loans by that licensee.

SEC. 18. Section 28144 of the Financial Code is amended to read:

28144. (a) Each licensee 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. The pro rata share shall be the proportion that a licensee's servicing activities in this state bears to 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 license 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 the license is revoked or suspended, a licensee shall not engage in the business of servicing student loans in this state pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

(e) Notwithstanding subdivisions (a) to (d), inclusive, the commissioner may by rule require licensees to pay assessments through the Nationwide Multistate Licensing System & Registry.

SEC. 19. Section 28153 is added to the Financial Code, to read:

28153. The commissioner may require persons who are not expressly excluded from this division under subdivision (b) of Section 28102 to file with the commissioner, under oath or otherwise, in the form and within a reasonable period of time as prescribed by the commissioner by special reports, or answers in writing to specific questions or requests for information.

SEC. 20. Section 28153.5 is added to the Financial Code, to read:

28153.5. In any proceeding under this division, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

SEC. 21. Section 28154 of the Financial Code is amended to read:

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

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

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

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

SEC. 22. 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.

SEC. 23. The Legislature finds and declares that Section 12 of this act, which adds Article 3 (commencing with Section 28125) to Chapter 2 of Division 12.5 of the Financial Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

It is necessary to protect the confidential information and material submitted by applicants and licensees to the Nationwide Multistate Licensing System & Registry.