

AMENDED IN ASSEMBLY APRIL 10, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2233

Introduced by Assembly Member Atkins

February 24, 2012

An act to ~~amend Section 22361~~ *add Article 3.6 (commencing with Section 22370) to Chapter 2 of Division 9 of the Financial Code, relating to finance lending.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2233, as amended, Atkins. ~~Finance lending: Pilot Program for Affordable Credit-Building Opportunities: Small Installment Consumer Loan Act.~~

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations and makes a willful violation of its provisions a crime. Existing law regulates the charges a licensee may impose or receive on loans it makes and authorizes a licensee to contract for and receive specified alternative charges and administrative and delinquency fees.

This bill would authorize licensed finance lenders and brokers to make small installment consumer loans for a limited term, as specified, of an amount of at least \$750 and no more than \$2,500. The bill would authorize licensees to contract for and receive specified alternative interest rates and charges, including an administrative fee, an account service fee, and a returned check fee. The bill would also specify that the borrower has a right to rescind a small installment consumer loan,

as specified, and would require the lender to disclose this right to the borrower in the loan agreement.

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

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 law provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Corporations. Existing law, until January 1, 2015, establishes the Pilot Program for Affordable Credit-Building Opportunities for the purpose of increasing the availability of credit-building opportunities to underbanked individuals seeking low-dollar-value loans. Existing law requires the commissioner to report to specified legislative committees, by January 1, 2014, summarizing utilization of the Pilot Program for Affordable Credit-Building Opportunities, as specified.~~

~~This bill would change the due date of the commissioner’s report to July 1, 2013.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3.6 (commencing with Section 22370) is
2 added to Chapter 2 of Division 9 of the Financial Code, to read:

3

4 Article 3.6. Small Installment Consumer Loan Act

5

6 22370. The purpose of this article is to provide an economically
7 viable legal and regulatory framework for lenders to make small
8 installment consumer loans in a manner that benefits consumers.

9 22371. Any licensee may engage in lending under this article.

10 22372. Nothing in this article shall exempt any licensee from
11 any of the provisions of this division or Section 1632 of the Civil
12 Code.

13 22373. (a) Any loan made pursuant to this section shall comply
14 with the following requirements:

1 (1) *The loan shall be closed-end, unsecured, and payable in*
2 *substantially equal, fully amortizing payments in accordance with*
3 *subdivision (b) of Section 22307.*

4 (2) *The term of the loan shall be no less than 180 days and no*
5 *greater than 18 months.*

6 (3) *The principal amount of the loan shall not be less than seven*
7 *hundred fifty dollars (\$750) and shall not exceed two thousand*
8 *five hundred dollars (\$2,500).*

9 (4) *The loan shall be underwritten in accordance with the*
10 *requirements of Section 1452 of Title 10 of the California Code*
11 *of Regulations.*

12 (b) *Notwithstanding Sections 22303 and 22304, a licensee may*
13 *contract for and receive the following amounts on any loan made*
14 *pursuant to this section:*

15 (1) *Notwithstanding Sections 22307 and 22308, interest not to*
16 *exceed 3 percent per month on the unpaid principal amount of the*
17 *loan during that month.*

18 (2) *As an alternative to simple interest, interest may be assessed*
19 *on a precomputed basis in compliance with Section 22400,*
20 *provided that the Rule of 78's is not used to calculate the refund*
21 *of precomputed interest upon prepayment in full. In the event that*
22 *a precomputed loan is prepaid in full by cash, refinancing, or*
23 *otherwise, the borrower shall receive a rebate of a prorated portion*
24 *of the precomputed interest equal to the ratio of the number of*
25 *days remaining in the scheduled loan term, not including the date*
26 *of prepayment in full, to the total number of days in the loan term*
27 *had all payments been made as scheduled.*

28 (3) *A nonrefundable administrative fee, fully earned at the time*
29 *the loan is made, equal to 7.5 percent of the principal amount of*
30 *the loan or one hundred fifty dollars (\$150), whichever is less. If*
31 *interest on the loan is assessed on a precomputed basis and the*
32 *loan is prepaid in full, the administrative fee is not subject to rebate*
33 *under Section 22400.*

34 (4) *A monthly account service fee of no more than eighty-five*
35 *dollars (\$85) per month, assessed each month. The monthly*
36 *account service fee shall be divided across all loan payments in a*
37 *manner that ensures all those payments are substantially equal.*
38 *In the event the loan term includes a partial month, the monthly*
39 *account service fee may be prorated for that partial month by using*
40 *the ratio of the number of days the loan is outstanding in that*

1 month to the total number of days in that month. In the event a
 2 loan is repaid in full, the monthly account service fee may be
 3 prorated in the same manner. No monthly account service fee may
 4 be charged for any month beyond the original term of the loan.

5 (5) A fee for a dishonored check, negotiable order of withdrawal,
 6 or share draft, as permitted by Section 22320.

7 22374. The borrower shall have the right to rescind the loan
 8 by notifying the licensee of the borrower's intent to rescind the
 9 loan and returning the principal amount advanced by the end of
 10 the lender's business day following the date of the consummation
 11 of the loan. The licensee shall disclose this right to the borrower
 12 in the loan agreement.

13 SEC. 2. No reimbursement is required by this act pursuant to
 14 Section 6 of Article XIII B of the California Constitution because
 15 the only costs that may be incurred by a local agency or school
 16 district will be incurred because this act creates a new crime or
 17 infraction, eliminates a crime or infraction, or changes the penalty
 18 for a crime or infraction, within the meaning of Section 17556 of
 19 the Government Code, or changes the definition of a crime within
 20 the meaning of Section 6 of Article XIII B of the California
 21 Constitution.

22 SECTION 1. Section 22361 of the Financial Code is amended
 23 to read:

24 22361. ~~(a) On or before July 1, 2013, the commissioner shall~~
 25 ~~submit a report to the Senate Committee on Banking, Finance and~~
 26 ~~Insurance, the Assembly Committee on Banking and Finance, and~~
 27 ~~the Senate and Assembly Committees on Judiciary summarizing~~
 28 ~~utilization of the Pilot Program for Affordable Credit-Building~~
 29 ~~Opportunities and including recommendations regarding whether~~
 30 ~~the program should be continued after January 1, 2015.~~

31 ~~(b) The information disclosed to the commissioner for the~~
 32 ~~commissioner's use in preparing the report described in this section~~
 33 ~~is exempted from any requirement of public disclosure by~~
 34 ~~paragraph (2) of subdivision (d) of Section 6254 of the Government~~
 35 ~~Code.~~

36 ~~(c) If there is more than one licensee approved to participate in~~
 37 ~~the program under this article, the report required pursuant to~~
 38 ~~subdivision (a) shall state information in aggregate so as not to~~
 39 ~~identify data by specific licensee.~~

- 1 ~~(d) The report required pursuant to this section shall include,~~
2 ~~but not be limited to, the following:~~
- 3 ~~(1) The number of finance lender licensees who applied to~~
4 ~~participate in the program.~~
- 5 ~~(2) The number of finance lender licensees accepted to~~
6 ~~participate in the program.~~
- 7 ~~(3) The number of program loan applications received by lenders~~
8 ~~participating in the program, the number of loans made pursuant~~
9 ~~to the program, the total amount loaned, and the distribution of~~
10 ~~interest rates and principal amounts upon origination among those~~
11 ~~loans.~~
- 12 ~~(4) The number of borrowers who obtained more than one~~
13 ~~program loan.~~
- 14 ~~(5) Of the number of borrowers who obtained more than one~~
15 ~~program loan, the percentage of those borrowers whose credit~~
16 ~~scores increased between successive loans, based on information~~
17 ~~from at least one major credit bureau, and the average size of the~~
18 ~~increase.~~
- 19 ~~(6) The income distribution of borrowers, including the number~~
20 ~~of borrowers who obtained at least one program loan and who~~
21 ~~resided in a low-to-moderate-income census tract at the time of~~
22 ~~their loan application.~~
- 23 ~~(7) The number of borrowers who obtained loans for the~~
24 ~~following purposes, based on borrower responses at the time of~~
25 ~~their loan applications indicating the primary purpose for which~~
26 ~~the loan was obtained:~~
- 27 ~~(A) Medical.~~
- 28 ~~(B) Other emergency.~~
- 29 ~~(C) Vehicle repair.~~
- 30 ~~(D) Vehicle purchase.~~
- 31 ~~(E) To pay bills.~~
- 32 ~~(F) To consolidate debt.~~
- 33 ~~(G) To build or repair credit history.~~
- 34 ~~(H) To finance a purchase of goods or services other than a~~
35 ~~vehicle.~~
- 36 ~~(I) Other.~~
- 37 ~~(8) The number of borrowers who have a bank account, the~~
38 ~~number of borrowers who have a bank account and use~~
39 ~~check-cashing services, and the number of borrowers who do not~~
40 ~~have a bank account.~~

- 1 ~~(9) The number and type of finders used by all licensees, the~~
2 ~~amount of finder's fees paid by the type of finder, and the relative~~
3 ~~performance of loans consummated by finders compared to the~~
4 ~~performance of loans consummated without a finder.~~
- 5 ~~(10) The number and percentage of borrowers who obtained~~
6 ~~one or more program loans on which late fees were assessed, the~~
7 ~~total amount of late fees assessed, and the average late fee assessed~~
8 ~~by dollar amount and as a percentage of the principal amount~~
9 ~~loaned.~~
- 10 ~~(11) The quality of underwriting and performance of loans under~~
11 ~~this article consistent with the reporting standards applicable to~~
12 ~~other loans and financial products, including, but not limited to,~~
13 ~~credit cards and deferred deposit transactions.~~
- 14 ~~(12) The number of times the commissioner found that a finder~~
15 ~~or licensee had violated this article.~~
- 16 ~~(13) The number of times that the commissioner disqualified a~~
17 ~~finder from performing services, barred a finder from performing~~
18 ~~services at one or more specific locations of the finder, terminated~~
19 ~~a written agreement between a finder and a licensee, or imposed~~
20 ~~an administrative penalty.~~
- 21 ~~(14) Recommendations for improving the program.~~
- 22 ~~(15) Recommendations regarding whether the program should~~
23 ~~be continued after January 1, 2015.~~
- 24 ~~(e) The commissioner shall conduct a random sample survey~~
25 ~~of borrowers who have participated in the program to obtain~~
26 ~~information regarding the borrowers' experience and licensees'~~
27 ~~compliance with this article. The results of this survey shall be~~
28 ~~included in the report required by this section.~~