

**Introduced by Senator Hill**

February 19, 2013

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An act to amend Section 22352 of the Financial Code, relating to consumer loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 318, as introduced, Hill. Consumer loans.

Existing law requires that loans made under the provisions of the Pilot Program for Affordable Credit-Building Opportunities meet specified criteria.

This bill would make conforming and technical, nonsubstantive changes to those provisions.

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

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

- 1 SECTION 1. Section 22352 of the Financial Code is amended  
2 to read:  
3 22352. (a) Any loan made pursuant to this section shall comply  
4 with the following requirements:  
5 (1) The loan shall be unsecured.  
6 (2) Interest on the loan ~~accrues~~ *shall accrue* on a simple-interest  
7 basis, through the application of a daily periodic rate to the actual  
8 unpaid principal balance each day.  
9 (3) The licensee ~~discloses~~ *shall disclose* the following to the  
10 consumer in writing at the time of application:  
11 (A) The annual percentage rate, the periodic payment amount,  
12 and the total finance charge, calculated as required by Federal

1 Reserve Board Regulation Z, as to a loan of an amount and term  
2 substantially similar to the loan applied for by the consumer.

3 (B) That the consumer shall have the right to rescind the loan  
4 by notifying the licensee of the consumer’s intent to rescind the  
5 loan and returning the principal advanced by the end of the business  
6 day following the date of the consummation of the loan.

7 (4) The loan ~~has~~ *shall have* a minimum principal amount upon  
8 origination of two hundred fifty dollars (\$250) and a term of not  
9 less than the following:

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

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

15 (C) One hundred eighty days for loans whose principal balance  
16 upon origination is at least one thousand five hundred dollars  
17 (\$1,500).

18 (5) The licensee ~~complies~~ *shall comply* with the requirements  
19 of any applicable state or federal law.

20 (b) As an alternative to the charges authorized by Section 22303  
21 or 22304, a licensee approved by the commissioner to participate  
22 in the program may contract for and receive charges for a loan  
23 made pursuant to this section at a rate not exceeding the sum of  
24 the following:

25 (1) Two and one-half percent per month on that part of the  
26 unpaid principal balance of the loan up to and including, but not  
27 in excess of, one thousand dollars (\$1,000).

28 (2) Two and one-sixth percent per month on that portion of the  
29 unpaid principal balance of the loan in excess of one thousand  
30 dollars (\$1,000).

31 (c) Notwithstanding subdivision (b), a licensee approved by the  
32 commissioner to participate in the program shall reduce the rate  
33 on each subsequent loan to the same borrower by a minimum of  
34 one-twelfth of 1 percent per month, if all of the following  
35 conditions are met:

36 (1) The subsequent loan is originated no more than 180 days  
37 after the prior loan is fully repaid.

38 (2) The borrower was never more than 15 days delinquent on  
39 the prior loan.

1 (3) The prior loan was outstanding for at least one-half of its  
2 original term prior to its repayment.

3 (d) As to any loan made under this section, a licensee approved  
4 by the commissioner to participate in the program may contract  
5 for and receive an administrative fee, which shall be fully earned  
6 immediately upon making the loan, in an amount not in excess of  
7 either 5 percent of the principal amount, exclusive of the  
8 administrative fee, or sixty-five dollars (\$65), whichever is less.  
9 A licensee shall not charge the same borrower more than one  
10 administrative fee in any six-month period. An administrative fee  
11 shall not be contracted for or received in connection with the  
12 refinancing of a loan unless at least one year has elapsed since the  
13 receipt of a previous administrative fee paid by the borrower. Only  
14 one administrative fee shall be contracted for or received until the  
15 loan has been repaid in full. Section 22305 shall not apply to any  
16 loan made under this section.

17 (e) Notwithstanding subdivision (a) of Section 22320.5, a  
18 licensee approved by the commissioner to participate in the  
19 program may contract for and receive a delinquency fee that is  
20 one of the following amounts:

21 (1) For a period in default of not less than seven days, an amount  
22 not in excess of twelve dollars (\$12).

23 (2) For a period in default of not less than 14 days, an amount  
24 not in excess of eighteen dollars (\$18).

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

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

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

32 (3) No delinquency fee may be imposed on a borrower who is  
33 180 days or more past due if that fee would result in the sum of  
34 the borrower's remaining unpaid principal balance, accrued interest,  
35 and delinquency fees exceeding 180 percent of the original  
36 principal amount of the borrower's loan.

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

1 (g) The following shall apply to a loan made by a licensee  
2 pursuant to this section:  
3 (1) Prior to disbursement of loan proceeds, the licensee shall  
4 either (A) offer a credit education program or seminar to the  
5 borrower that has been previously reviewed and approved by the  
6 commissioner for use in complying with this section; or (B) invite  
7 the borrower to a credit education program or seminar offered by  
8 an independent third party that has been previously reviewed and  
9 approved by the commissioner for use in complying with this  
10 section. The borrower shall not be required to participate in either  
11 of these education programs or seminars.  
12 (2) The licensee shall report each borrower's payment  
13 performance to at least one of the national credit reporting agencies  
14 in the United States.  
15 (3) (A) The licensee shall underwrite each loan to determine a  
16 borrower's ability and willingness to repay the loan pursuant to  
17 the loan terms, and shall not make a loan if it determines, through  
18 its underwriting, that the borrower's total monthly debt service  
19 payments, at the time of origination, including the loan for which  
20 the borrower is being considered, and across all outstanding forms  
21 of credit that can be independently verified by the licensee, exceed  
22 50 percent of the borrower's gross monthly income.  
23 (B) (i) The licensee shall seek information and documentation  
24 pertaining to all of a borrower's outstanding debt obligations during  
25 the loan application and underwriting process, including loans that  
26 are self reported by the borrower but not available through  
27 independent verification. The licensee shall verify that information  
28 using a credit report from at least one of the three major credit  
29 bureaus or through other available electronic debt verification  
30 services that provide reliable evidence of a borrower's outstanding  
31 debt obligations.  
32 (ii) Notwithstanding the verification requirement in  
33 subparagraph (A), the licensee shall request from the borrower  
34 and include all information obtained from the borrower regarding  
35 outstanding deferred deposit transactions in the calculation of the  
36 borrower's outstanding debt obligations.  
37 (iii) The licensee shall not be required to consider, for purposes  
38 of debt-to-income ratio evaluation, loans from friends or family.

1 (C) The licensee shall also verify the borrower’s income that  
2 the licensee relies on to determine the borrower’s debt-to-income  
3 ratio using information from either of the following:

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

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

10 (h) (1) Notwithstanding Sections 22311 to 22315, inclusive,  
11 no person, in connection with, or incidental to, the making of any  
12 loan made pursuant to this article, may offer, sell, or require the  
13 borrower to contract for “credit insurance” as defined in paragraph  
14 (1) of subdivision (a) of Section 22314 or insurance on tangible  
15 personal or real property of the type specified in Section 22313.

16 (2) Notwithstanding Sections 22311 to 22315, inclusive, no  
17 licensee, finder, or any other person that participates in the  
18 origination of a loan under this article shall refer a borrower to any  
19 other person for the purchase of “credit insurance” as defined in  
20 paragraph (1) of subdivision (a) of Section 22314 or insurance on  
21 tangible personal or real property of the type specified in Section  
22 22313.

23 (i) (1) No licensee shall require, as a condition of providing the  
24 loan, that the borrower waive any right, penalty, remedy, forum,  
25 or procedure provided for in any law applicable to the loan,  
26 including the right to file and pursue a civil action or file a  
27 complaint with or otherwise communicate with the commissioner  
28 or any court or other public entity, or that the borrower agree to  
29 resolve disputes in a jurisdiction outside of California or to the  
30 application of laws other than those of California, as provided by  
31 law. Any such waiver by a borrower must be knowing, voluntary,  
32 and in writing, and expressly not made a condition of doing  
33 business with the licensee. Any such waiver that is required as a  
34 condition of doing business with the licensee shall be presumed  
35 involuntary, unconscionable, against public policy, and  
36 unenforceable. The licensee has the burden of proving that a waiver  
37 of any rights, penalties, forums, or procedures was knowing,  
38 voluntary, and not made a condition of the contract with the  
39 borrower.

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

10 (3) This subdivision shall not apply to any agreement to waive  
11 any right, penalty, remedy, forum, or procedure, including any  
12 agreement to arbitrate a claim or dispute, after a claim or dispute  
13 has arisen. Nothing in this subdivision shall affect the enforceability  
14 or validity of any other provision of the contract.

15 (j) This section shall not apply to any loan of a bona fide  
16 principal amount of two thousand five hundred dollars (\$2,500)  
17 or more as determined in accordance with Section 22251. For  
18 purposes of this subdivision, “bona fide principal amount” shall  
19 be determined in accordance with Section 22251.