

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 318

Introduced by Senator Hill

February 19, 2013

An act to amend Section ~~22352~~ 22750 of, and to add and repeal Article 3.6 (commencing with Section 22365) of Chapter 2 of Division 9 of, the Financial Code, relating to consumer loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 318, as amended, Hill. Consumer loans: *Pilot Program for Increased Access to Responsible Small Dollar Loans.*

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.

Existing law establishes, until January 1, 2015, 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. Under the program, licensees must file an application with, and pay a fee to, the Commissioner of Corporations to participate in the program. Existing law authorizes a licensee approved by the commissioner to participate in the program to impose specified alternative interest rates and charges, including an administrative fee and delinquency fees, on loans of at least \$250 and less than \$2,500, subject to certain requirements. Existing law also authorizes licensees in the program to use the services

of finders, defined as entities who, at the finder's physical location for business, bring licensees and prospective borrowers together for the purpose of negotiating loan contracts at the finder's location, subject to a written agreement meeting specified requirements.

The Governor's Reorganization Plan No. 2 of the 2011–12 Regular Session provides that, on and after July 1, 2013, certain responsibilities of the Department of Corporations and the Commissioner of Corporations will be transferred to the Department of Business Oversight and the Deputy Commissioner of Business Oversight for the Division of Corporations.

This bill would, until January 1, 2018, establish the Pilot Program for Increased Access to Responsible Small Dollar Loans for the purpose of allow greater access for responsible installment loans in principal amounts of at least \$300 and less than \$2,500. The bill would require licensees and other entities to file an application and pay a specified fee to the Deputy Commissioner of Business Oversight for the Division of Corporations to participate in the program. The bill would authorize a licensee approved by the deputy commissioner to participate in the program to impose specified alternative interest rates and charges, including an underwriting fee, an administrative fee, and delinquency fees, on loans of at least \$300 and less than \$2,500, subject to certain requirements.

This bill would also authorize a licensee in the program to use the services of finders, defined as entities who, at the finder's physical location for business, bring licensees and prospective borrowers together for the purpose of negotiating loan contracts, subject to a written agreement meeting specified requirements. The bill would establish the services a finder is authorized and required to perform, and would require a finder to comply with the laws applicable to the licensee relative to information security. The bill would require a licensee to notify the deputy commissioner within 15 days of entering into a contract with a finder, would require a licensee to pay an annual finder registration fee to the deputy commissioner, and would require a licensee to submit an annual report to the deputy commissioner on the licensee's relationship and business arrangements with a finder, as specified. The bill would authorize the deputy commissioner to examine the operations of a licensee and a finder to ensure that the activities of the licensee and the finder are in compliance with these provisions. The bill would make a licensee that uses a finder responsible for a violation of these provisions by a finder or a finder's employee, and would

authorize the deputy commissioner to impose administrative penalties against a finder for a violation of these provisions. The bill would authorize the deputy commissioner, upon a violation of these provisions, to disqualify a finder from performing services, bar a finder from performing services at one or more specific locations of the finder, terminate a written agreement between a licensee and a finder, and, under specified circumstances, prohibit the use of the finder by all licensees. The bill would authorize a licensee participating in the program to appoint one or more branch managers with responsibility for multiple branch locations, subject to approval by the deputy commissioner.

This bill would require the deputy commissioner to examine the performance of each licensee in the program at least once every 24 months, and would require the costs of examination to be paid by the licensee to the deputy commissioner, as specified. The bill would also require the deputy commissioner to conduct a random sample survey of borrowers under the program. The bill would require the deputy commissioner to post a report on the deputy commissioner's Internet Web site by January 1, 2016, and once again by January 1, 2017, summarizing utilization of the Pilot Program for Increased Access to Responsible Small Dollar Loans, as specified.

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

This bill would also make a clarifying change to the California Finance Lenders Law.

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 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~~-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 22365) is
2 added to Chapter 2 of Division 9 of the Financial Code, to read:

3
4 Article 3.6. *Pilot Program for Increased Access to Responsible*
5 *Small Dollar Loans.*

6
7 22365. (a) *The Pilot Program for Increased Access to*
8 *Responsible Small Dollar Loans is hereby established.*

9 (b) *The Legislature finds and declares that consumer demand*
10 *for responsible installment loans in principal amounts of at least*
11 *three hundred dollars (\$300) but less than two thousand five*
12 *hundred dollars (\$2,500) exceeds the supply of these loans. In*
13 *2010, the Legislature enacted the Pilot Program for Affordable*
14 *Credit-Building Opportunities, as a first step toward addressing*
15 *this gap. California's experience to date with that pilot program*
16 *has identified several improvements that could be made, which*
17 *would allow more Californians to access responsible installment*
18 *loans of at least three hundred dollars (\$300) but less than two*
19 *thousand five hundred dollars (\$2,500). This new Pilot Program*
20 *for Increased Access to Responsible Small Dollar Loans is intended*
21 *to implement those improvements.*

22 (c) *For purposes of this article:*

23 (1) *"Deputy commissioner" means the Deputy Commissioner*
24 *of Business Oversight for the Division of Corporations.*

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

27 22366. (a) *Any entity licensed under this chapter that wishes*
28 *to participate in the program, that is in good standing with the*
29 *Deputy Commissioner of Business Oversight for the Division of*
30 *Corporations and has no outstanding enforcement actions or*
31 *deficiencies at the time of its application, shall file an application*
32 *with the deputy commissioner, in a manner prescribed by the*
33 *deputy commissioner, and shall pay a fee to the deputy*
34 *commissioner, in an amount calculated by the deputy commissioner*
35 *to cover its costs to administer this article.*

36 (b) *Any entity wishing to participate in the program that is not*
37 *licensed pursuant to this chapter may submit a combined*
38 *application to the deputy commissioner, in a manner prescribed*

1 *by the deputy commissioner, for licensure under this chapter and*
2 *admission to the program and shall pay a fee to the deputy*
3 *commissioner in an amount equal to the fees that would have been*
4 *imposed if the person had submitted separate applications. To be*
5 *eligible to apply in this manner, an entity must be free of*
6 *outstanding enforcement or other disciplinary actions taken against*
7 *it by any of California’s financial regulators or by a financial*
8 *regulator of another state.*

9 *22367. Every entity approved by the deputy commissioner to*
10 *participate in the program shall file with the deputy commissioner*
11 *on or before March 15 an annual report consistent with Section*
12 *22159, separate from any other annual report the licensee may be*
13 *required to file.*

14 *22368. Except as otherwise provided, nothing in this article*
15 *shall exempt any licensee from any of the provisions of this division*
16 *or Section 1632 of the Civil Code.*

17 *22369. No licensee may offer or make a loan, nor impose any*
18 *charges or fees pursuant to Section 22370, nor use a finder*
19 *pursuant to Section 22371, without prior approval from the deputy*
20 *commissioner to participate in the program.*

21 *22370. (a) Any loan made pursuant to this section shall comply*
22 *with the following requirements:*

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

26 *(2) The licensee shall disclose the following to the consumer in*
27 *writing, in a type face no smaller than 10-point type, at the time*
28 *of application:*

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

39 *(B) A statement that the consumer has the right to rescind the*
40 *loan by notifying the licensee of the consumer’s intent to rescind*

1 *the loan and returning the principal advanced by the end of the*
2 *business day following the date the loan is consummated.*

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

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

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

11 *(C) One hundred eighty days for loans whose principal balance*
12 *upon origination is at least one thousand five hundred dollars*
13 *(\$1,500).*

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

19 *(1) 32.75 percent plus the United States prime lending rate, as*
20 *of the date of loan origination, on that portion of the unpaid*
21 *principal balance of the loan up to and including, but not in excess*
22 *of, one thousand dollars (\$1,000). The interest rate calculated as*
23 *of the date of loan origination shall be fixed for the life of the loan.*

24 *(2) 28.75 percent plus the United States prime lending rate, as*
25 *of the date of loan origination, on that portion of the unpaid*
26 *principal balance of the loan in excess of one thousand dollars*
27 *(\$1,000), but less than two thousand five hundred dollars (\$2,500).*
28 *The interest rate calculated as of the date of loan origination shall*
29 *be fixed for the life of the loan.*

30 *(c) As to any loan made under this section, a licensee approved*
31 *by the deputy commissioner to participate in the program may*
32 *contract for and receive an underwriting fee, which shall be fully*
33 *earned immediately upon making the loan, in an amount not to*
34 *exceed thirty dollars (\$30), and an administrative fee, which shall*
35 *be fully earned immediately upon making the loan, in an amount*
36 *not to exceed 6 percent of the principal amount, exclusive of the*
37 *underwriting fee and administrative fee, or seventy-five dollars*
38 *(\$75), whichever is less. A licensee shall not charge the same*
39 *borrower an underwriting fee or an administrative fee more than*
40 *once in any four-month period. An underwriting fee or an*

1 administrative fee shall not be contracted for or received in
2 connection with the refinancing of a loan unless at least eight
3 months have elapsed since the receipt of a previous underwriting
4 fee or administrative fee paid by the borrower. Only one
5 underwriting fee and one administrative fee may be contracted for
6 or received until the loan has been repaid in full. Section 22305
7 shall not apply to any loan made under this section.

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

14 (1) For a period in default of not less than four days, an amount
15 not in excess of sixteen dollars (\$16).

16 (2) For a period in default of not less than 14 days, an amount
17 not in excess of twenty-two dollars (\$22).

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

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

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

25 (3) No delinquency fee may be imposed on a borrower who is
26 180 days or more past due if that fee would result in the sum of
27 the borrower's remaining unpaid principal balance, accrued
28 interest, and delinquency fees exceeding 180 percent of the original
29 principal amount of the borrower's loan.

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

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

36 (1) Prior to disbursement of loan proceeds, the licensee shall
37 either (A) offer a credit education program or seminar to the
38 borrower that has been previously reviewed and approved by the
39 deputy commissioner for use in complying with this section; or
40 (B) invite the borrower to a credit education program or seminar

1 offered by an independent third party that has been previously
2 reviewed and approved by the deputy commissioner for use in
3 complying with this section. The borrower shall not be required
4 to participate in either of these education programs or seminars.

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

18 (A) The deputy commissioner may approve a licensee for the
19 program, before that licensee has been accepted as a data furnisher
20 by a consumer reporting agency, if the deputy commissioner has
21 a reasonable expectation, based on information supplied by the
22 licensee, of both of the following:

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

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

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

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

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

11 (ii) *Notwithstanding the verification requirement in*
12 *subparagraph (A), the licensee shall request from the borrower*
13 *and include all information obtained from the borrower regarding*
14 *outstanding deferred deposit transactions in the calculation of the*
15 *borrower’s outstanding debt obligations.*

16 (iii) *The licensee shall not be required to consider, for purposes*
17 *of debt-to-income ratio evaluation, loans from friends or family.*

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

21 (i) *Electronic means or services that provide reliable evidence*
22 *of the borrower’s actual income.*

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

27 (4) *The licensee shall notify each borrower, at least two days*
28 *prior to each payment due date, informing the borrower of the*
29 *amount due, and the payment due date. Notification may be*
30 *provided by any means acceptable to the borrower.*

31 (g) (1) *Notwithstanding Sections 22311 to 22315, inclusive, no*
32 *person, in connection with, or incidental to, the making of any*
33 *loan made pursuant to this article, may offer, sell, or require the*
34 *borrower to contract for “credit insurance” as defined in*
35 *paragraph (1) of subdivision (a) of Section 22314 or insurance on*
36 *tangible personal or real property of the type specified in Section*
37 *22313.*

38 (2) *Notwithstanding Sections 22311 to 22315, inclusive, no*
39 *licensee, finder, or any other person that participates in the*
40 *origination of a loan under this article shall refer a borrower to*

1 any other person for the purchase of “credit insurance” as defined
2 in paragraph (1) of subdivision (a) of Section 22314 or insurance
3 on tangible personal or real property of the type specified in
4 Section 22313.

5 (h) (1) No licensee shall require, as a condition of providing
6 the loan, that the borrower waive any right, penalty, remedy,
7 forum, or procedure provided for in any law applicable to the
8 loan, including the right to file and pursue a civil action or file a
9 complaint with or otherwise communicate with the deputy
10 commissioner or any court or other public entity, or that the
11 borrower agree to resolve disputes in a jurisdiction outside of
12 California or to the application of laws other than those of
13 California, as provided by law. Any such waiver by a borrower
14 must be knowing, voluntary, and in writing, and expressly not
15 made a condition of doing business with the licensee. Any such
16 waiver that is required as a condition of doing business with the
17 licensee shall be presumed involuntary, unconscionable, against
18 public policy, and unenforceable. The licensee has the burden of
19 proving that a waiver of any rights, penalties, forums, or
20 procedures was knowing, voluntary, and not made a condition of
21 the contract with the borrower.

22 (2) No licensee shall refuse to do business with or discriminate
23 against a borrower or applicant on the basis that the borrower or
24 applicant refuses to waive any right, penalty, remedy, forum, or
25 procedure, including the right to file and pursue a civil action or
26 complaint with, or otherwise notify, the deputy commissioner or
27 any court or other public entity. The exercise of a person’s right
28 to refuse to waive any right, penalty, remedy, forum, or procedure,
29 including a rejection of a contract requiring a waiver, shall not
30 affect any otherwise legal terms of a contract or an agreement.

31 (3) This subdivision shall not apply to any agreement to waive
32 any right, penalty, remedy, forum, or procedure, including any
33 agreement to arbitrate a claim or dispute, after a claim or dispute
34 has arisen. Nothing in this subdivision shall affect the
35 enforceability or validity of any other provision of the contract.

36 (i) This section shall not apply to any loan of a bona fide
37 principal amount of two thousand five hundred dollars (\$2,500)
38 or more as determined in accordance with Section 22251. For
39 purposes of this subdivision, “bona fide principal amount” shall
40 be determined in accordance with Section 22251.

1 22371. (a) A licensee who is approved by the deputy
2 commissioner to participate in the program may use the services
3 of one or more finders as provided in this article.

4 (b) For purposes of this article, a “finder” means an entity that,
5 at the finder’s physical location for business, brings a licensee
6 and a prospective borrower together for the purpose of negotiating
7 a loan contract.

8 (c) An entity, whose sole means of bringing a licensee and a
9 prospective borrower together at that entity’s physical location
10 for business is via an electronic access point through which a
11 prospective borrower may directly access the Internet Web site of
12 a licensee is not a “finder” for purposes of this article.

13 22372. (a) A finder may perform one or more of the following
14 services for a licensee at the finder’s physical location for business:

15 (1) Distributing, circulating, using, or publishing preprinted
16 brochures, flyers, factsheets, or other written materials relating
17 to loans that the licensee may make or negotiate and that have
18 been reviewed and approved in writing by the licensee prior to
19 their being distributed, circulated, or published.

20 (2) Providing written factual information about loan terms,
21 conditions, or qualification requirements to a prospective borrower
22 that has been either prepared by the licensee or reviewed and
23 approved in writing by the licensee. A finder may discuss that
24 information with a prospective borrower in general terms, but
25 may not provide counseling or advice to a prospective borrower.

26 (3) Notifying a prospective borrower of the information needed
27 in order to complete a loan application without providing
28 counseling or advice to a prospective borrower.

29 (4) Entering information provided by the prospective borrower
30 on a preprinted or electronic application form or onto a
31 preformatted computer database without providing counseling or
32 advice to a prospective borrower.

33 (5) Assembling credit applications and other materials obtained
34 in the course of a credit application transaction for submission to
35 the licensee.

36 (6) Contacting the licensee to determine the status of a loan
37 application.

38 (7) Communicating a response that is returned by the licensee’s
39 automated underwriting system to a borrower or a prospective
40 borrower.

1 (8) *Obtaining a borrower’s signature on documents prepared*
2 *by the licensee and delivering final copies of the documents to the*
3 *borrower.*

4 (b) *A finder shall not engage in any of the following activities:*

5 (1) *Providing counseling or advice to a borrower or prospective*
6 *borrower.*

7 (2) *Providing loan-related marketing material that has not*
8 *previously been approved by the licensee to a borrower or a*
9 *prospective borrower.*

10 (3) *Interpreting or explaining the relevance, significance, or*
11 *effect of any of the marketing materials or loan documents the*
12 *finder provides to a borrower or prospective borrower.*

13 (c) *Any person who performs one or more of the following*
14 *activities is a broker within the meaning of Section 22004 rather*
15 *than a finder within the meaning of this section:*

16 (1) *Negotiating the price, length, or any other loan term between*
17 *a licensee and a prospective borrower.*

18 (2) *Advising either a prospective borrower or a licensee as to*
19 *any loan term.*

20 (3) *Offering information pertaining to a single prospective*
21 *borrower to more than one licensee, except that, if a licensee has*
22 *declined to offer a loan to a prospective borrower and has so*
23 *notified that prospective borrower in writing, the person may then*
24 *offer information pertaining to a single prospective borrower to*
25 *another licensee with which it has a finder’s agreement.*

26 (4) *Personally contacting or providing services to a borrower*
27 *or prospective borrower at any place other than the finder’s*
28 *physical location for business.*

29 (d) *A finder shall comply with all laws applicable to the licensee*
30 *that impose requirements upon the licensee for safeguards for*
31 *information security.*

32 22373. (a) *At the time the finder receives or processes an*
33 *application for a program loan, the finder shall provide the*
34 *following statement to the applicant, on behalf of the licensee, in*
35 *no smaller than 10-point type, and shall ask the applicant to*
36 *acknowledge receipt of the statement in writing:*

37 “*Your loan application has been referred to us by [Name of*
38 *Finder]. We may pay a fee to [Name of Finder] for the successful*
39 *referral of your loan application. IF YOU ARE APPROVED FOR*
40 *THE LOAN, [NAME OF LICENSEE] WILL BECOME YOUR*

1 *LENDER, AND YOU WILL BE BUILDING A RELATIONSHIP*
2 *WITH [NAME OF LICENSEE]. If you wish to report a complaint*
3 *about [Name of Finder] or [Name of Licensee] regarding this*
4 *loan transaction, you may contact the Department of Business*
5 *Oversight, Division of Corporations at 1-866-ASK-CORP*
6 *(1-866-275-2677), or file your complaint online at*
7 *www.corp.ca.gov.”*

8 *(b) If the loan is consummated, the licensee shall provide the*
9 *borrower a written copy of the disclosure notice within two weeks*
10 *following the date of the loan consummation. A licensee may*
11 *include the disclosure within its loan contract, or may provide it*
12 *as a separate document to the borrower, via any means acceptable*
13 *to the borrower.*

14 *22374. (a) A finder may be compensated by the licensee*
15 *pursuant to the written agreement between the licensee and the*
16 *finder, as described in Section 22376.*

17 *(b) The compensation of a finder by a licensee shall be subject*
18 *to all of the following requirements:*

19 *(1) No fee shall be paid to a finder in connection with a loan*
20 *application until and unless that loan is consummated.*

21 *(2) No fee shall be paid to a finder based upon the principal*
22 *amount of the loan.*

23 *(3) No fee paid to a finder shall exceed the following amounts:*

24 *(A) Forty-five dollars (\$45) per loan for the first 40 loans*
25 *originated each month at the finder’s location.*

26 *(B) Forty dollars (\$40) per loan for any subsequent loans*
27 *originated during that month at the finder’s location.*

28 *(4) The finder’s location for services under this article and other*
29 *information required by Section 22375 has been reported to the*
30 *deputy commissioner and the finder has not been barred from*
31 *providing services at that location by the deputy commissioner.*

32 *(c) No licensee shall, directly or indirectly, pass on to a*
33 *borrower any fee, or any portion of any fee, that the licensee pays*
34 *to a finder in connection with that borrower’s loan or loan*
35 *application.*

36 *22375. A licensee that utilizes the service of a finder shall do*
37 *all of the following:*

38 *(a) Notify the deputy commissioner within 15 days of entering*
39 *into a contract with a finder, on a form acceptable to the deputy*
40 *commissioner, regarding all of the following:*

1 (1) *The name and business address of the finder and all*
2 *locations at which the finder will perform services under this*
3 *article.*

4 (2) *The name and contact information for an employee of the*
5 *finder who is knowledgeable about, and has the authority to*
6 *execute, the contract governing the business relationship between*
7 *the finder and the licensee.*

8 (3) *The name and contact information for one or more*
9 *employees of the finder who are responsible for that finder's*
10 *finding activities on behalf of the licensee.*

11 (4) *A list of the activities the finder shall perform on behalf of*
12 *the licensee.*

13 (5) *Any other information requested by the deputy commissioner.*

14 (b) *Pay an annual finder registration fee to the deputy*
15 *commissioner in an amount to be established by the deputy*
16 *commissioner by regulation for each finder utilized by the licensee.*

17 (c) *Submit an annual report to the deputy commissioner*
18 *including any information pertaining to each finder and the*
19 *licensee's relationship and business arrangements with each finder*
20 *as the deputy commissioner may by regulation require.*

21 22376. *All arrangements between a licensee and a finder shall*
22 *be set forth in a written agreement between the parties. The*
23 *agreement shall contain a provision establishing that the finder*
24 *agrees to comply with all regulations that are established by the*
25 *deputy commissioner pursuant to this article regarding the*
26 *activities of finders and that the deputy commissioner shall have*
27 *access to all of the finder's books and records that pertain to the*
28 *finder's operations under the agreement with the licensee.*

29 22377. (a) *The deputy commissioner may examine the*
30 *operations of each licensee and each finder to ensure that the*
31 *activities of the licensee and the finder are in compliance with this*
32 *article. The costs of the deputy commissioner's examination of*
33 *each finder shall be attributed to the deputy commissioner's*
34 *examination of the licensee. Any violation of this article by a finder*
35 *or a finder's employee shall be attributed to the finance lender*
36 *with whom it has entered into an agreement for purposes of*
37 *determining the licensee's compliance with this division.*

38 (b) *Upon a determination that a finder has acted in violation*
39 *of this article, or any implementing regulation, the deputy*
40 *commissioner shall have the authority to disqualify a finder from*

1 performing services under this article, bar a finder from performing
2 services at one or more specific locations of that finder, terminate
3 a written agreement between a finder and a licensee, and, if the
4 deputy commissioner deems that action in the public interest,
5 prohibit the use of that finder by all licensees accepted to
6 participate in the pilot program.

7 (c) In addition to any other penalty allowed by law, the deputy
8 commissioner may impose an administrative penalty up to two
9 thousand five hundred dollars (\$2,500) for violations of this article
10 committed by a finder.

11 22378. Notwithstanding the requirements of Section 22102
12 and its implementing regulations, a licensee accepted to participate
13 in the program may appoint one or more branch managers with
14 responsibility for multiple branch locations, subject to approval
15 by the deputy commissioner, and a finding by the deputy
16 commissioner that the centralized nature of underwriting and other
17 key business activities performed by the licensee does not require
18 a unique manager for each branch location, to ensure the
19 protection of consumers who seek out loans from the licensee. The
20 deputy commissioner may revoke this approval at any time, upon
21 a finding that a unique branch manager at each branch location
22 is required for consumer protection.

23 22379. Notwithstanding any other law, the deputy
24 commissioner shall examine each licensee that is accepted into
25 the program at least once every 24 months. The cost of each
26 examination of a licensee shall be paid to the deputy commissioner
27 by the licensee examined, and the deputy commissioner may
28 maintain an action for the recovery of the cost in any court of
29 competent jurisdiction. In determining the cost of the examination,
30 the deputy commissioner may use the estimated average hourly
31 cost for all persons performing examinations of licensees or other
32 persons subject to this division for the fiscal year.

33 22380. (a) On or before January 1, 2016, and again, on or
34 before January 1, 2017, the deputy commissioner shall post a
35 report on his or her Internet Web site summarizing utilization of
36 the Pilot Program for Increased Access to Responsible Small
37 Dollar Loans.

38 (b) The information disclosed to the deputy commissioner for
39 the deputy commissioner's use in preparing the report described
40 in this section is exempted from any requirement of public

1 disclosure by paragraph (2) of subdivision (d) of Section 6254 of
2 the Government Code.

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

7 (d) The report required pursuant to this section shall specify
8 the time period to which the report corresponds, and shall include,
9 but not be limited to, the following for that time period:

10 (1) The number of entities that applied to participate in the
11 program.

12 (2) The number of entities accepted to participate in the
13 program.

14 (3) The reason or reasons for rejecting applications for
15 participation, if applicable. This information shall be provided in
16 a manner that does not identify the entity or entities rejected.

17 (4) The number of program loan applications received by
18 lenders participating in the program, the number of loans made
19 pursuant to the program, the total amount loaned, and the
20 distribution of interest rates and principal amounts upon
21 origination among those loans.

22 (5) The number of borrowers who obtained more than one
23 program loan.

24 (6) Of the number of borrowers who obtained more than one
25 program loan, the percentage of those borrowers whose credit
26 scores increased between successive loans, based on information
27 from at least one major credit bureau, and the average size of the
28 increase.

29 (7) The income distribution of borrowers upon loan origination.

30 (8) The number and type of finders used by licensees and the
31 relative performance of loans consummated by finders compared
32 to the performance of loans consummated without a finder.

33 (9) The number and percentage of borrowers who obtained one
34 or more program loans on which late fees were assessed, the total
35 amount of late fees assessed, and the average late fee assessed by
36 dollar amount and as a percentage of the principal amount loaned.

37 (10) The number and percentage of borrowers who defaulted
38 on a program loan.

39 (11) The number and types of violations of this article by finders,
40 which were documented by the deputy commissioner.

1 (12) *The number and types of violations of this article by*
2 *licensees, which were documented by the deputy commissioner.*

3 (13) *The number of times that the deputy commissioner*
4 *disqualified a finder from performing services, barred a finder*
5 *from performing services at one or more specific locations of the*
6 *finder, terminated a written agreement between a finder and a*
7 *licensee, or imposed an administrative penalty.*

8 (14) *The number of complaints received by the deputy*
9 *commissioner about a licensee or a finder, and the nature of those*
10 *complaints.*

11 (15) *Recommendations for improving the program.*

12 (16) *Recommendations regarding whether the program should*
13 *be continued after January 1, 2018.*

14 (e) *The deputy commissioner shall conduct a random sample*
15 *survey of borrowers who have participated in the program to*
16 *obtain information regarding the borrowers' experience and*
17 *licensees' compliance with this article. The results of this survey*
18 *shall be included in the report required by this section.*

19 22381. *This article shall remain in effect only until January 1,*
20 *2018, and as of that date is repealed, unless a later enacted statute,*
21 *that is enacted before January 1, 2018, deletes or extends that*
22 *date.*

23 SEC. 2. *Section 22750 of the Financial Code is amended to*
24 *read:*

25 22750. (a) *If any amount other than, or in excess of, the*
26 *charges permitted by this division is willfully charged, contracted*
27 *for, or received, the contract of loan is void, and no person has any*
28 *right to collect or receive any principal, charges, or recompense*
29 *in connection with the transaction.*

30 (b) *If any provision of this division is willfully violated in the*
31 *making or collection of a loan, whether by a licensee or by an*
32 *unlicensed person subject to this division, the contract of loan is*
33 *void, and no person has any right to collect or receive any principal,*
34 *charges, or recompense in connection with the transaction.*

35 SEC. 3. *No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 SECTION 1. ~~Section 22352 of the Financial Code is amended~~
5 ~~to read:~~

6 ~~22352. (a) Any loan made pursuant to this section shall comply~~
7 ~~with the following requirements:~~

8 ~~(1) The loan shall be unsecured.~~

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

12 ~~(3) The licensee shall disclose the following to the consumer~~
13 ~~in writing at the time of application:~~

14 ~~(A) The annual percentage rate, the periodic payment amount,~~
15 ~~and the total finance charge, calculated as required by Federal~~
16 ~~Reserve Board Regulation Z, as to a loan of an amount and term~~
17 ~~substantially similar to the loan applied for by the consumer.~~

18 ~~(B) That the consumer shall have the right to rescind the loan~~
19 ~~by notifying the licensee of the consumer's intent to rescind the~~
20 ~~loan and returning the principal advanced by the end of the business~~
21 ~~day following the date of the consummation of the loan.~~

22 ~~(4) The loan shall have a minimum principal amount upon~~
23 ~~origination of two hundred fifty dollars (\$250) and a term of not~~
24 ~~less than the following:~~

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

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

30 ~~(C) One hundred eighty days for loans whose principal balance~~
31 ~~upon origination is at least one thousand five hundred dollars~~
32 ~~(\$1,500).~~

33 ~~(5) The licensee shall comply with the requirements of any~~
34 ~~applicable state or federal law.~~

35 ~~(b) As an alternative to the charges authorized by Section 22303~~
36 ~~or 22304, a licensee approved by the commissioner to participate~~
37 ~~in the program may contract for and receive charges for a loan~~
38 ~~made pursuant to this section at a rate not exceeding the sum of~~
39 ~~the following:~~

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

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

7 ~~(e) Notwithstanding subdivision (b), a licensee approved by the~~
8 ~~commissioner to participate in the program shall reduce the rate~~
9 ~~on each subsequent loan to the same borrower by a minimum of~~
10 ~~one-twelfth of 1 percent per month, if all of the following~~
11 ~~conditions are met:~~

12 ~~(1) The subsequent loan is originated no more than 180 days~~
13 ~~after the prior loan is fully repaid.~~

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

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

18 ~~(d) As to any loan made under this section, a licensee approved~~
19 ~~by the commissioner to participate in the program may contract~~
20 ~~for and receive an administrative fee, which shall be fully earned~~
21 ~~immediately upon making the loan, in an amount not in excess of~~
22 ~~either 5 percent of the principal amount, exclusive of the~~
23 ~~administrative fee, or sixty-five dollars (\$65), whichever is less.~~
24 ~~A licensee shall not charge the same borrower more than one~~
25 ~~administrative fee in any six-month period. An administrative fee~~
26 ~~shall not be contracted for or received in connection with the~~
27 ~~refinancing of a loan unless at least one year has elapsed since the~~
28 ~~receipt of a previous administrative fee paid by the borrower. Only~~
29 ~~one administrative fee shall be contracted for or received until the~~
30 ~~loan has been repaid in full. Section 22305 shall not apply to any~~
31 ~~loan made under this section.~~

32 ~~(e) Notwithstanding subdivision (a) of Section 22320.5, a~~
33 ~~licensee approved by the commissioner to participate in the~~
34 ~~program may contract for and receive a delinquency fee that is~~
35 ~~one of the following amounts:~~

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

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

1 (f) If a licensee opts to impose a delinquency fee, it shall use
2 the delinquency fee schedule described in subdivision (c), subject
3 to all of the following:

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

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

8 (3) No delinquency fee may be imposed on a borrower who is
9 180 days or more past due if that fee would result in the sum of
10 the borrower's remaining unpaid principal balance, accrued interest,
11 and delinquency fees exceeding 180 percent of the original
12 principal amount of the borrower's loan.

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

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

19 (1) Prior to disbursement of loan proceeds, the licensee shall
20 either (A) offer a credit education program or seminar to the
21 borrower that has been previously reviewed and approved by the
22 commissioner for use in complying with this section; or (B) invite
23 the borrower to a credit education program or seminar offered by
24 an independent third party that has been previously reviewed and
25 approved by the commissioner for use in complying with this
26 section. The borrower shall not be required to participate in either
27 of these education programs or seminars.

28 (2) The licensee shall report each borrower's payment
29 performance to at least one of the national credit reporting agencies
30 in the United States.

31 (3) (A) The licensee shall underwrite each loan to determine a
32 borrower's ability and willingness to repay the loan pursuant to
33 the loan terms, and shall not make a loan if it determines, through
34 its underwriting, that the borrower's total monthly debt service
35 payments, at the time of origination, including the loan for which
36 the borrower is being considered, and across all outstanding forms
37 of credit that can be independently verified by the licensee, exceed
38 50 percent of the borrower's gross monthly income.

39 (B) (i) The licensee shall seek information and documentation
40 pertaining to all of a borrower's outstanding debt obligations during

1 the loan application and underwriting process, including loans that
2 are self-reported by the borrower but not available through
3 independent verification. The licensee shall verify that information
4 using a credit report from at least one of the three major credit
5 bureaus or through other available electronic debt verification
6 services that provide reliable evidence of a borrower's outstanding
7 debt obligations.

8 (ii) Notwithstanding the verification requirement in
9 subparagraph (A), the licensee shall request from the borrower
10 and include all information obtained from the borrower regarding
11 outstanding deferred deposit transactions in the calculation of the
12 borrower's outstanding debt obligations.

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

15 (C) The licensee shall also verify the borrower's income that
16 the licensee relies on to determine the borrower's debt-to-income
17 ratio using information from either of the following:

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

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

24 (h) (1) Notwithstanding Sections 22311 to 22315, inclusive,
25 no person, in connection with, or incidental to, the making of any
26 loan made pursuant to this article, may offer, sell, or require the
27 borrower to contract for "credit insurance" as defined in paragraph
28 (1) of subdivision (a) of Section 22314 or insurance on tangible
29 personal or real property of the type specified in Section 22313.

30 (2) Notwithstanding Sections 22311 to 22315, inclusive, no
31 licensee, finder, or any other person that participates in the
32 origination of a loan under this article shall refer a borrower to any
33 other person for the purchase of "credit insurance" as defined in
34 paragraph (1) of subdivision (a) of Section 22314 or insurance on
35 tangible personal or real property of the type specified in Section
36 22313.

37 (i) (1) No licensee shall require, as a condition of providing the
38 loan, that the borrower waive any right, penalty, remedy, forum,
39 or procedure provided for in any law applicable to the loan,
40 including the right to file and pursue a civil action or file a

1 complaint with or otherwise communicate with the commissioner
2 or any court or other public entity, or that the borrower agree to
3 resolve disputes in a jurisdiction outside of California or to the
4 application of laws other than those of California, as provided by
5 law. Any such waiver by a borrower must be knowing, voluntary,
6 and in writing, and expressly not made a condition of doing
7 business with the licensee. Any such waiver that is required as a
8 condition of doing business with the licensee shall be presumed
9 involuntary, unconscionable, against public policy, and
10 unenforceable. The licensee has the burden of proving that a waiver
11 of any rights, penalties, forums, or procedures was knowing,
12 voluntary, and not made a condition of the contract with the
13 borrower.

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

23 (3) This subdivision shall not apply to any agreement to waive
24 any right, penalty, remedy, forum, or procedure, including any
25 agreement to arbitrate a claim or dispute, after a claim or dispute
26 has arisen. Nothing in this subdivision shall affect the enforceability
27 or validity of any other provision of the contract.

28 (j) This section shall not apply to any loan of a bona fide
29 principal amount of two thousand five hundred dollars (\$2,500)
30 or more as determined in accordance with Section 22251. For
31 purposes of this subdivision, "bona fide principal amount" shall
32 be determined in accordance with Section 22251.