

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN SENATE MAY 31, 2016

SENATE BILL

No. 984

Introduced by Senator Hueso

(Principal coauthor: Assembly Member Alejo)

(Coauthors: Senators Hill, Leno, and Mitchell)

(Coauthors: Assembly Members Bonilla, Bonta, Brown, Low, Mullin, Ting, and Williams)

February 10, 2016

An act to amend Sections ~~22380~~ 22370, 22380, and 22381 of the Financial Code, relating to consumer loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 984, as amended, Hueso. Pilot Program for Increased Access to Responsible Small Dollar Loans: extension.

(1) Existing law, the California Finance Lenders Law, *generally* provides for the licensure and regulation of finance lenders and brokers by the Commissioner of Business Oversight and makes a willful violation of its provisions a crime. ~~Existing~~ *That* law, until January 1, 2018, establishes the Pilot Program for Increased Access to Responsible Small Dollar ~~Loans for the purpose of allowing greater access for~~ responsible installment loans in principal amounts of at least \$300 and less than \$2,500. ~~Existing law~~ *Loans, which* requires licensees and other entities to file an application and pay a specified fee to the commissioner to participate in the program. ~~Existing law~~ *The program* 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 *unsecured* loans of at least \$300 and less than \$2,500, subject to certain requirements. ~~Existing law; The program requires the commissioner, on or before January 1, 2017, requires the commissioner to post a report on his or her Internet Web site containing specified information including summarizing utilization of the program, a recommendation whether the pilot program should be continued after January 1, 2018, 2018, and the results of a random sample survey of borrowers.~~

This bill would extend the Pilot Program for Increased Access to Responsible Small Dollar Loans until January 1, 2023, ~~require an additional report on or before July 1, 2020, and make a conforming change to the requirement that the report include the above-referenced recommendation.~~ *for the commissioner to report a recommendation for further continuation of the program, and require additional annual reporting, as specified. The bill would remove the requirement for the commissioner to conduct and report the results of a random sample survey of borrowers. The bill would also make a technical change to a cross-reference within the program provisions.*

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

(2) 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.

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

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

- 1 SECTION 1. Section 22370 of the Financial Code is amended
- 2 to read:
- 3 22370. (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 shall accrue on a simple-interest basis,
- 7 through the application of a daily periodic rate to the actual unpaid
- 8 principal balance each day.

1 (3) The licensee shall disclose the following to the consumer
2 in writing, in a typeface no smaller than 12-point type, at the time
3 of application:

4 (A) The amount borrowed; the total dollar cost of the loan to
5 the consumer if the loan is paid back on time, including the sum
6 of the administrative fee, principal amount borrowed, and interest
7 payments; the corresponding annual percentage rate, calculated in
8 accordance with Federal Reserve Board Regulation Z (12 C.F.R.
9 226); the periodic payment amount; the delinquency fee schedule;
10 and the following statement: “Repaying your loan early will lower
11 your borrowing costs by reducing the amount of interest you will
12 pay. This loan has no prepayment penalty.”

13 (B) A statement that the consumer has the right to rescind the
14 loan by notifying the licensee of the consumer’s intent to rescind
15 the loan and returning the principal advanced by the end of the
16 business day following the date the loan is consummated.

17 (4) A licensee may provide the borrower with the disclosures
18 required by paragraph (3) in a mobile or other electronic
19 application, on which the size of the typeface of the disclosure can
20 be manually modified by a prospective borrower, if the prospective
21 borrower is given the option to print the disclosure in a typeface
22 of at least 12-point size or is provided by the licensee with a
23 hardcopy of the disclosure in a typeface of at least 12-point size
24 before the loan is consummated.

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

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

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

33 (C) One hundred eighty days for loans whose principal balance
34 upon origination is at least one thousand five hundred dollars
35 (\$1,500).

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

1 (1) The lesser of 36 percent or the sum of 32.75 percent plus
2 the United States prime lending rate, as of the date of loan
3 origination, on that portion of the unpaid principal balance of the
4 loan up to and including, but not in excess of, one thousand dollars
5 (\$1,000). The interest rate calculated as of the date of loan
6 origination shall be fixed for the life of the loan.

7 (2) The lesser of 35 percent or the sum of 28.75 percent plus
8 the United States prime lending rate, as of the date of loan
9 origination, on that portion of the unpaid principal balance of the
10 loan in excess of one thousand dollars (\$1,000), but less than two
11 thousand five hundred dollars (\$2,500). The interest rate calculated
12 as of the date of loan origination shall be fixed for the life of the
13 loan.

14 (c) (1) As to any loan made under this section, a licensee
15 approved by the commissioner to participate in the program may
16 contract for and receive an administrative fee, which shall be fully
17 earned immediately upon making the loan, in an amount not to
18 exceed the applicable of the following:

19 (A) Seven percent of the principal amount, exclusive of the
20 administrative fee, or ninety dollars (\$90), whichever is less, on
21 the first loan made to a borrower.

22 (B) Six percent of the principal amount, exclusive of the
23 administrative fee, or seventy-five dollars (\$75), whichever is less,
24 on the second and subsequent loans made to that borrower.

25 (2) A licensee shall not charge the same borrower an
26 administrative fee more than once in any four-month period.

27 (3) For purposes of this section, “refinance” means the
28 replacement or revision of an existing loan contract with a borrower
29 that results in an extension of additional principal to that borrower.
30 A licensee shall not refinance a loan made under this section, unless
31 all of the following conditions are met at the time the borrower
32 submits an application to refinance:

33 (A) The borrower has repaid at least 60 percent of the
34 outstanding principal remaining on his or her loan.

35 (B) The borrower is current on his or her outstanding loan.

36 (C) The licensee underwrites the new loan in accordance with
37 paragraph (4) of subdivision ~~(f)~~ (g).

38 (D) If the loan proceeds of both the original loan and the
39 refinance loan are to be used for personal, family, or household

1 purposes, the borrower has not previously refinanced the
2 outstanding loan more than once.

3 (4) Notwithstanding paragraph (3), an administrative fee shall
4 not be contracted for or received in connection with the refinancing
5 of a loan unless at least eight months have elapsed since the receipt
6 of a previous administrative fee paid by the borrower. With the
7 exception of a loan that is refinanced, only one administrative fee
8 may be contracted for or received until the loan has been repaid
9 in full. Section 22305 shall not apply to any loan made under this
10 section.

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

17 (1) For a period of delinquency of not less than seven days, an
18 amount not in excess of fourteen dollars (\$14).

19 (2) For a period of delinquency of not less than 14 days, an
20 amount not in excess of twenty dollars (\$20).

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

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

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

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

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

37 (f) The licensee shall develop and implement policies and
38 procedures designed to respond to questions raised by applicants
39 and borrowers regarding their loans, including those involving

1 finders, and to address customer complaints as soon as reasonably
2 practicable.

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

5 (1) Prior to disbursement of loan proceeds, the licensee shall
6 either (A) offer a credit education program or seminar to the
7 borrower that has been previously reviewed and approved by the
8 commissioner for use in complying with this section; or (B) invite
9 the borrower to a credit education program or seminar offered by
10 an independent third party that has been previously reviewed and
11 approved by the commissioner for use in complying with this
12 section. The borrower shall not be required to participate in either
13 of these education programs or seminars. A credit education
14 program or seminar offered pursuant to this paragraph shall be
15 provided at no cost to the borrower.

16 (2) The licensee shall report each borrower's payment
17 performance to at least one consumer reporting agency that
18 compiles and maintains files on consumers on a nationwide basis,
19 upon acceptance as a data furnisher by that consumer reporting
20 agency. For purposes of this section, a consumer reporting agency
21 that compiles and maintains files on consumers on a nationwide
22 basis is one that meets the definition in Section 603(p) of the
23 federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any
24 licensee that is accepted as a data furnisher after admittance into
25 the program must report all borrower payment performance since
26 its inception of lending under the program, as soon as practicable
27 after its acceptance into the program, but in no event more than
28 six months after its acceptance into the program.

29 (A) The commissioner may approve a licensee for the program,
30 before that licensee has been accepted as a data furnisher by a
31 consumer reporting agency, if the commissioner has a reasonable
32 expectation, based on information supplied by the licensee, of both
33 of the following:

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

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

39 (B) Notwithstanding subparagraph (A), the commissioner shall
40 withdraw approval for pilot program participation from any

1 licensee that fails to become accepted as a data furnisher by a
2 consumer reporting agency within six months of commencing
3 lending under the pilot program.

4 (3) The licensee shall provide each borrower with the name of
5 the consumer reporting agency or agencies to which it will report
6 the borrower's payment history. A licensee that is accepted as a
7 data furnisher after admittance into the program shall notify its
8 borrowers, as soon as practicable following acceptance as a data
9 furnisher, regarding the name of the consumer reporting agency
10 or agencies to which it will report that borrower's payment history.

11 (4) (A) The licensee shall underwrite each loan to determine a
12 borrower's ability and willingness to repay the loan pursuant to
13 the loan terms, and shall not make a loan if it determines, through
14 its underwriting, that the borrower's total monthly debt service
15 payments, at the time of origination, including the loan for which
16 the borrower is being considered, and across all outstanding forms
17 of credit that can be independently verified by the licensee, exceed
18 50 percent of the borrower's gross monthly income.

19 (B) (i) The licensee shall seek information and documentation
20 pertaining to all of a borrower's outstanding debt obligations during
21 the loan application and underwriting process, including loans that
22 are self-reported by the borrower but not available through
23 independent verification. The licensee shall verify that information
24 using a credit report from at least one consumer reporting agency
25 that compiles and maintains files on consumers on a nationwide
26 basis or through other available electronic debt verification services
27 that provide reliable evidence of a borrower's outstanding debt
28 obligations.

29 (ii) Notwithstanding the verification requirement in
30 subparagraph (A), the licensee shall request from the borrower
31 and include all information obtained from the borrower regarding
32 outstanding deferred deposit transactions in the calculation of the
33 borrower's outstanding debt obligations.

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

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

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

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

5 (5) The licensee shall notify each borrower, at least two days
6 prior to each payment due date, informing the borrower of the
7 amount due, and the payment due date. Notification may be
8 provided by any means mutually acceptable to the borrower and
9 the licensee. A borrower shall have the right to opt out of this
10 notification at any time, upon electronic or written request to the
11 licensee. The licensee shall notify each borrower of this right prior
12 to disbursing loan proceeds.

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

19 (2) Notwithstanding Sections 22311 to 22315, inclusive, no
20 licensee, finder, or any other person that participates in the
21 origination of a loan under this article shall refer a borrower to any
22 other person for the purchase of “credit insurance” as defined in
23 paragraph (1) of subdivision (a) of Section 22314 or insurance on
24 tangible personal or real property of the type specified in Section
25 22313.

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

1 penalties, forums, or procedures was knowing, voluntary, and not
2 made a condition of the contract with the borrower.

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

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

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

22 ~~SECTION 4.~~

23 *SEC. 2.* Section 22380 of the Financial Code is amended to
24 read:

25 22380. (a) On or before July 1, 2015, ~~again, on or before~~
26 ~~January 1, 2017, and again, on or before July 1, 2020, and annually~~
27 ~~on or before July 1, 2017, to July 1, 2021, inclusive,~~ the
28 commissioner shall post a report on his or her Internet Web site
29 summarizing utilization of the Pilot Program for Increased Access
30 to Responsible Small Dollar Loans. The report required to be
31 submitted on or before July 1, 2015, shall additionally include the
32 information required by former Section 22361, summarizing
33 utilization of the Pilot Program for Affordable Credit-Building
34 Opportunities, which was created by Chapter 640 of the Statutes
35 of 2010.

36 (b) The information disclosed to the commissioner for the
37 commissioner’s use in preparing the ~~report~~ *reports* described in
38 this section is exempted from any requirement of public disclosure
39 by paragraph (2) of subdivision (d) of Section 6254 of the
40 Government Code.

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

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

8 (1) The number of entities that applied to participate in the
9 program.

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

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

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

19 (5) The number of borrowers who obtained more than one
20 program loan and the distribution of the number of loans per
21 borrower.

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

27 (7) The income distribution of borrowers upon loan origination,
28 including the number of borrowers who obtained at least one
29 program loan and who resided in a low-to-moderate-income census
30 tract at the time of their loan application.

31 (8) The number of borrowers who obtained loans for the
32 following purposes, based on borrower responses at the time of
33 their loan applications indicating the primary purpose for which
34 the loan was obtained:

35 (A) Medical.

36 (B) Other emergency.

37 (C) Vehicle repair.

38 (D) Vehicle purchase.

39 (E) To pay bills.

40 (F) To consolidate debt.

- 1 (G) To build or repair credit history.
- 2 (H) To finance a purchase of goods or services other than a
3 vehicle.
- 4 (I) For other than personal, family, or household purposes.
- 5 (J) Other.
- 6 (9) The number of borrowers who self-report that they had a
7 bank account at the time of their loan application, the number of
8 borrowers who self-report that they had a bank account and used
9 check-cashing services, and the number of borrowers who
10 self-report that they did not have a bank account at the time of
11 their loan application.
- 12 (10) With respect to refinance loans, ~~the~~ *each* report shall
13 specifically include the following information:
 - 14 (A) The number and percentage of borrowers who applied for
15 a refinance loan.
 - 16 (B) Of those borrowers who applied for a refinance loan, the
17 number and percentage of borrowers who obtained a refinance
18 loan.
 - 19 (C) Of those borrowers who obtained a refinance loan:
 - 20 (i) The percentage of borrowers who refinanced once.
 - 21 (ii) The percentage of borrowers who refinanced twice.
 - 22 (iii) The percentage of borrowers who refinanced more than
23 twice.
 - 24 (D) Of those borrowers who obtained a refinance loan, the
25 average percentage of principal paid down before obtaining a
26 refinance loan.
 - 27 (E) Of those borrowers who obtained a refinance loan, the
28 average amount of additional principal extended.
 - 29 (F) Of those borrowers who obtained a refinance loan, the
30 average number of late payments made on the loan that was
31 refinanced.
- 32 (11) The number and type of finders used by licensees and the
33 relative performance of loans consummated by finders compared
34 to the performance of loans consummated without a finder.
- 35 (12) The number and percentage of borrowers who obtained
36 one or more program loans on which late fees were assessed, the
37 total amount of late fees assessed, and the average late fee assessed
38 by dollar amount and as a percentage of the principal amount
39 loaned.

1 (13) (A) The performance of loans under this article, as reflected
2 by all of the following:

3 (i) The number and percentage of program borrowers who
4 experienced at least one delinquency lasting between 7 and 29
5 days, and the distribution of principal loan amounts corresponding
6 to those delinquencies.

7 (ii) The number and percentage of program borrowers who
8 experienced at least one delinquency lasting between 30 and 59
9 days, and the distribution of principal loan amounts corresponding
10 to those delinquencies.

11 (iii) The number and percentage of program borrowers who
12 experienced at least one delinquency lasting 60 days or more, and
13 the distribution of principal loan amounts corresponding to those
14 delinquencies.

15 (iv) The number and percentage of program borrowers who
16 experienced at least one delinquency of greater than 7 days and
17 who did not subsequently bring their loan current.

18 (v) Among loans that were ever delinquent for 7 days or more,
19 the average number of times borrowers experienced a delinquency
20 of 7 days or more.

21 (B) To the extent data are readily available to the commissioner,
22 the commissioner shall include in ~~his or her~~ *each* report comparable
23 delinquency data for unsecured loans made by persons licensed
24 under Chapter 2 (commencing with Section 22365) of Division 9
25 in principal amounts between two thousand five hundred dollars
26 (\$2,500) and four thousand nine hundred ninety-nine dollars
27 (\$4,999), and in principal amounts between five thousand dollars
28 (\$5,000) and nine thousand nine hundred ninety-nine dollars
29 (\$9,999), and for unsecured extensions of credit made by
30 state-chartered banks and credit unions under the commissioner's
31 jurisdiction, in principal amounts between two thousand five
32 hundred dollars (\$2,500) and four thousand nine hundred
33 ninety-nine dollars (\$4,999), and in principal amounts between
34 five thousand dollars (\$5,000) and nine thousand nine hundred
35 ninety-nine dollars (\$9,999).

36 (14) The number and types of violations of this article by finders,
37 which were documented by the commissioner.

38 (15) The number and types of violations of this article by
39 licensees, which were documented by the commissioner.

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

6 (17) The number of complaints received by the commissioner
7 about a licensee or a finder, and the nature of those complaints.

8 (18) Recommendations for improving the program.

9 (19) Recommendations regarding whether the program should
10 be continued after January 1, 2023.

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

16 ~~SEC. 2.~~

17 *SEC. 3.* Section 22381 of the Financial Code is amended to
18 read:

19 22381. This article shall remain in effect only until January 1,
20 2023, and as of that date is repealed.

21 ~~SEC. 3.~~

22 *SEC. 4.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.