

Senate Bill No. 912

CHAPTER 692

An act to amend Sections 22159, 22250, 22305, 22337, 22453, and 22467 of, and to add Section 22112 to, the Financial Code, relating to financial institutions.

[Approved by Governor October 9, 1995. Filed
with Secretary of State October 10, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 912, Calderon. Financial institutions: finance lenders.

Existing law regulates various persons in the business of making loans to others. The existing Personal Property Brokers Law regulates certain persons that make loans secured by personal property, the Consumer Finance Lenders Law regulates certain consumer lenders, and the Commercial Finance Lenders Law regulates certain commercial lenders. These 3 laws were consolidated by repealing the latter 2, and regulating consumer and commercial loans under the Personal Property Brokers Law, renamed the California Finance Lenders Law. This consolidation will generally become operative July 1, 1995.

This bill would make various changes to the California Finance Lenders Law, including adding certain new provisions relative to the issuance of surety bonds for licensees, and making changes in provisions relating to reports, and fees and charges to borrowers, as specified.

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

SECTION 1. Section 22112 is added to the Financial Code, to read:

22112. (a) A licensee shall maintain a surety bond in accordance with this subdivision in the amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner for review and approval prior to execution, and filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

SEC. 2. Section 22159 of the Financial Code is amended to read:

22159. (a) Each licensee shall file an annual report with the commissioner, on or before the 15th day of March, giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee within the state during the preceding calendar year for each licensed place of business. The individual annual reports filed pursuant to this section shall be made available to the public for inspection except, upon request in the annual report to the commissioner, the balance sheet contained in the annual report of a sole proprietor or any other nonpublicly traded persons. "Nonpublicly traded person" for purposes of this section means persons with securities owned by 35 or fewer individuals. The report shall be made under oath and in the form prescribed by the commissioner.

(b) A licensee shall make other special reports that may be required by the commissioner.

SEC. 3. Section 22250 of the Financial Code is amended to read:

22250. (a) The following sections do not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22154, 22155, 22307, 22313, 22314, 22315, and 22752, and the sections enumerated in subdivision (b).

(b) The following sections do not apply to any loan of a bona fide principal amount of five thousand dollars (\$5,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22201, 22202, 22300, 22305, and 22306, subdivision (a) of Section 22307, and Sections 22309, 22322, 22323, 22325, 22326, 22327, 22334, 22400, and 22751.

SEC. 4. Section 22305 of the Financial Code is amended to read:

22305. In addition to the charges authorized by Section 22303 or 22304, a licensee may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, with respect to a loan of a principal amount of not more than two thousand five hundred dollars (\$2,500) at a rate not in excess of 5 percent of the principal amount or fifty dollars (\$50), whichever is less, and with respect to a loan of a principal amount in excess of two thousand five hundred dollars (\$2,500), at an amount not to exceed seventy-five dollars (\$75). No administrative fee may be contracted for or



received in connection with the refinancing of a loan unless at least one year has elapsed since the receipt of a previous administrative fee paid by the borrower. Only one administrative fee may be contracted for or received until the loan has been repaid in full.

SEC. 5. Section 22337 of the Financial Code is amended to read:

22337. Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel or plainly mark "paid" and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, or an optical image reproduction thereof, except those documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee, or original documents otherwise required by law. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement,



furnished to the borrower as provided for in Section 9404 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9401 of the Commercial Code.

For purposes of this subdivision, an optical image reproduction shall meet all of the following requirements:

(1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, trust deed, mortgage, security agreement, assignment or order shall be stamped or printed on the optical image reproduction.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

SEC. 6. Section 22453 of the Financial Code is amended to read:

22453. The minimum monthly payment shall be determined by any of the following:

(a) The amount calculated by multiplying the unpaid principal balance, after an advance and including the advance, by a percent agreed upon by the borrower and the licensee, which shall be no less than $2\frac{1}{2}$ percent. The minimum payment shall continue at the amount determined pursuant to this paragraph until a subsequent loan advance is made.

(b) The amount calculated by multiplying the unpaid balance at the end of each billing cycle by a percent agreed upon by the borrower and the licensee, which shall be no less than 5 percent.

(c) Any other bona fide amount agreed upon by the borrower and the licensee which would be sufficient to pay all charges and some principal, originally scheduled to be due by the borrower as of each scheduled due date.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

SEC. 7. Section 22467 of the Financial Code is amended to read:

22467. (a) Any section that refers to this section or that is subject to Section 22251 does not apply to any open-end loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more, or to a duly licensed finance lender in connection



with any such loan if that provision is not used for the purpose of evading this division.

(b) In determining whether an open-end loan is an open-end loan of a bona fide principal amount specified in any section in this division or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the open-end loan shall be deemed to be for that amount or more if both the following criteria are met:

(1) The line of credit is equal to or more than the specified amount.

(2) The initial advance was equal to or more than the specified amount.

(c) A subsequent advance of money of less than the specified amount pursuant to the open-end loan agreement between a borrower and a licensed finance lender shall be deemed to be a loan of a principal amount of the specified amount if the criteria of paragraphs (1) and (2) of subdivision (b) have been met, even though the actual unpaid balance after the advance or at any other time is less than the specified amount.

(d) Notwithstanding subdivisions (b) and (c), the amount of the line of credit of an unsecured open-end loan shall be the criterion to determine whether an unsecured open-end loan is of a bona fide principal amount or more specified in any section in this division.

