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SB-984 Pilot Program for Increased Access to Responsible Small Dollar Loans: extension. (2015-2016)

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Senate Bill No. 984

CHAPTER 480

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

[Approved by Governor September 22, 2016. Filed with Secretary of State September 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 984, 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. That law, until January 1, 2018, establishes the Pilot Program for Increased Access to Responsible Small Dollar Loans, which requires licensees and other entities to file an application and pay a specified fee to the commissioner to participate in the program. 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. The program requires the commissioner, on or before January 1, 2017, to post a report on his or her Internet Web site summarizing utilization of the program, a recommendation whether the pilot program should be continued after January 1, 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, make a conforming change to the requirement 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 22370 of the Financial Code is amended to read:

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

(1) The loan shall be unsecured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) If the loan proceeds of both the original loan and the refinance loan are to be used for personal, family, or household purposes, the borrower has not previously refinanced the outstanding loan more than once.

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

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

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

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

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

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

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

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

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

(f) The licensee shall develop and implement policies and procedures designed to respond to questions raised by applicants and borrowers regarding their loans, including those involving finders, and to address customer complaints as soon as reasonably practicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) No licensee shall refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the commissioner or any court or other public entity. The exercise of a person's right to

refuse to waive any right, penalty, remedy, forum, or procedure, including a rejection of a contract requiring a waiver, shall not affect any otherwise legal terms of a contract or an agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Medical.

(B) Other emergency.

(C) Vehicle repair.

(D) Vehicle purchase.

(E) To pay bills.

(F) To consolidate debt.

(G) To build or repair credit history.

(H) To finance a purchase of goods or services other than a vehicle.

(I) For other than personal, family, or household purposes.

(J) Other.

(9) The number of borrowers who self-report that they had a bank account at the time of their loan application, the number of borrowers who self-report that they had a bank account and used check-cashing services, and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(10) With respect to refinance loans, each report shall specifically include the following information:

(A) The number and percentage of borrowers who applied for a refinance loan.

(B) Of those borrowers who applied for a refinance loan, the number and percentage of borrowers who obtained a refinance loan.

(C) Of those borrowers who obtained a refinance loan:

(i) The percentage of borrowers who refinanced once.

(ii) The percentage of borrowers who refinanced twice.

(iii) The percentage of borrowers who refinanced more than twice.

(D) Of those borrowers who obtained a refinance loan, the average percentage of principal paid down before obtaining a refinance loan.

(E) Of those borrowers who obtained a refinance loan, the average amount of additional principal extended.

(F) Of those borrowers who obtained a refinance loan, the average number of late payments made on the loan that was refinanced.

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

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

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

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

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

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

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

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

(B) To the extent data are readily available to the commissioner, the commissioner shall include in each report comparable delinquency data for unsecured loans made by persons licensed under Chapter 2 (commencing with Section 22365) of Division 9 in principal amounts between two thousand five hundred dollars (\$2,500) and four thousand nine hundred ninety-nine dollars (\$4,999), and in principal amounts between five thousand dollars (\$5,000) and nine thousand nine hundred ninety-nine dollars (\$9,999), and for unsecured extensions of credit made by state-chartered banks and credit unions under the commissioner's jurisdiction, in principal amounts between two thousand five hundred dollars (\$2,500) and four thousand nine hundred ninety-nine dollars (\$4,999), and in principal amounts between five thousand dollars (\$5,000) and nine thousand nine hundred ninety-nine dollars (\$9,999).

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

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

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

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

(18) Recommendations for improving the program.

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

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

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

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