

**Introduced by Senator Costa**

February 22, 2002

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An act to add Section 22342 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1926, as introduced, Costa. Finance lenders: live checks.

Existing law, the California Finance Lenders Law, provides for the regulation and licensure by the Commissioner of Corporations of persons engaging in the business of making consumer loans and commercial loans. A willful violation of the California Finance Lenders Law is a crime.

This bill would prohibit those persons from producing, advertising, offering, selling, distributing, or transferring for use in this state, any live check, as defined, unless the check contains a specified disclosure. The bill would prohibit live checks from being negotiable 30 days after the date printed on the live check. The bill would provide safeguards to protect consumers in the event a live check is fraudulently used by someone other than the intended recipient of the live check. The bill would also authorize the commissioner to levy administrative penalties against those persons for violating the provisions of this bill.

Because a violation of the bill's provisions would be a crime, the bill would impose a state-mandated local program.

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 22342 is added to the Financial Code,  
2 to read:

3 22342. (a) As used in this section, “instant loan check” or  
4 “live check” means any loan or extension of credit that is made  
5 available in the form of a check, draft, or any other negotiable  
6 instrument that can be deposited in a bank or used for third-party  
7 payments.

8 (b) No person shall produce, advertise, offer, sell, distribute, or  
9 otherwise transfer for use in this state any live check unless the  
10 document bears the following phrase diagonally printed in clear  
11 and conspicuous type on the front of the document: “THIS IS A  
12 LOAN OR AN EXTENSION OF CREDIT. YOU WILL PAY  
13 CHARGES.”

14 (c) Live checks shall only be negotiable for a period of 30 days  
15 after the date printed on the live check. Printed material  
16 accompanying the live check shall advise the consumer to void and  
17 destroy the live check if it is not going to be negotiated.

18 (d) Loan solicitations shall be mailed in envelopes with no  
19 indication that a negotiable instrument is contained in the mailing.  
20 Envelopes shall be marked with “do not forward” instructions to  
21 the postal service in the event that the intended addressee is no  
22 longer at the location.

23 (e) In the event that a live check is stolen or incorrectly received  
24 by someone other than the intended payee, and the live check is  
25 fraudulently cashed or otherwise negotiated, the following  
26 safeguards for the consumer shall apply:

27 (1) The creditor, upon receipt of notification that the consumer  
28 did not negotiate the live check, shall provide, and the consumer  
29 may complete, a statement confirming that the consumer did not  
30 deposit, cash, or otherwise negotiate the live check.

31 (2) Upon completion of the confirmation statement by the  
32 consumer, the consumer who was the intended payee shall have no  
33 liability for the loan obligation, absent any fraud by that consumer.

34 (f) The commissioner may, after appropriate notice and  
35 opportunity for hearing, by order levy administrative penalties



1 against a licensee who violates this section, and the licensee shall  
2 be liable for administrative penalties of no more than two thousand  
3 five hundred dollars (\$2,500) for each violation. Any hearing shall  
4 be held in accordance with the Administrative Procedure Act  
5 (Chapter 5 (commencing with Section 11500) of Part 1 of Division  
6 3 of Title 2 of the Government Code), and the commissioner shall  
7 have all the powers granted under the act. The remedy available  
8 under this subdivision is in addition to any other remedies  
9 available to the commissioner under this division that may be  
10 employed to enforce the provisions of this section.

11 (g) Nothing in this section shall preclude the application of any  
12 section or rule under this division.

13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.

