

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 197

Introduced by Senator Block

February 10, 2015

An act to add Sections 22602 and 22603 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Block. Finance lenders: commercial loan: referral.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders and makes a willful violation of the law a crime. Existing law defines a finance lender as any person who is engaged in the business of making consumer loans or commercial loans. Existing law defines a commercial loan as a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for purposes other than personal, family, or household.

This bill would authorize a licensed finance lender to compensate an unlicensed person or company in connection with the referral of one or more prospective borrowers to the licensee for a commercial loan if certain requirements are met, including, but not limited to, the referral leads to the consummation of a commercial loan, the annual percentage rate does not exceed a specified percentage, and the licensed finance lender obtains documentation from the prospective borrower documenting the borrower's commercial status, as specified. The bill would also require a licensed finance lender who receives an application for a commercial loan from a prospective borrower who has been

referred by an unlicensed person *or company* to provide a specified statement to the borrower regarding the referral arrangement.

By creating new requirements, the willful violation of which 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 22602 is added to the Financial Code, to
 2 read:

3 22602. A licensee that is a finance lender may pay
 4 compensation to an unlicensed person or company in connection
 5 with the referral of one or more prospective borrowers to the
 6 licensee, when all of the following conditions are met:

7 (a) The referral by the unlicensed person *or company* leads to
 8 the consummation of a commercial loan, as defined in Section
 9 22502, between the licensee and the prospective borrower referred
 10 by the unlicensed ~~person~~ *person or company*.

11 (b) The annual percentage rate of the loan extended to the
 12 prospective borrower does not exceed 36 percent.

13 ~~(c) The term of the loan is 12 months or greater.~~

14 ~~(d)~~

15 (c) Before approving the loan, the licensee does both of the
 16 following:

17 (1) Obtains documentation from the prospective borrower
 18 documenting the borrower’s commercial status. Examples of
 19 acceptable forms of documentation include, but are not limited to,
 20 a seller’s permit, business license, articles of incorporation, income
 21 tax returns showing business income, or bank account statements
 22 showing business income.

23 (2) Performs underwriting and obtains documentation to ensure
 24 that the prospective borrower ~~has~~ *will have* sufficient monthly
 25 gross revenue with which to repay the loan pursuant to the loan
 26 terms, and does not make a loan if it determines through its

1 underwriting that the prospective borrower’s total monthly
2 ~~expenses at the time of origination~~, *expenses*, including debt service
3 payments on the loan for which the prospective borrower is being
4 considered, *will* exceed the prospective borrower’s monthly gross
5 ~~revenue at the time of origination~~. *revenue*. Examples of acceptable
6 forms of documentation for verifying *current and projected* gross
7 monthly revenue and monthly expenses include, but are not limited
8 to, tax returns, bank statements, ~~and merchant financial statements~~.
9 *statements, business plan, business history, and industry-specific*
10 *knowledge and experience*. If the prospective borrower is a sole
11 proprietor or a corporation and the loan will be secured by a
12 personal guarantee provided by the owner of the corporation, a
13 credit report from at least one consumer credit reporting agency
14 that compiles and maintains files on consumers on a nationwide
15 basis may also be considered.

16 (e)

17 (d) The licensee annually submits information requested by the
18 commissioner regarding the payment of referral fees in the report
19 required pursuant to Section 22159.

20 SEC. 2. Section 22603 is added to the Financial Code, to read:

21 22603. At the time a licensee that is a finance lender receives
22 an application for a commercial loan from a prospective borrower
23 who has been referred by an unlicensed person *or company*, it shall
24 provide the following written statement to the prospective
25 borrower, in no smaller than 10-point type, and shall ask the
26 applicant to acknowledge receipt of the statement in writing:

27 ~~“Your loan application has~~ “*You have* been referred to us by
28 [Name of Unlicensed Person]. If you are approved for the loan,
29 we may pay a fee to [Name of Unlicensed Person *or Company*]
30 for the successful ~~referral of your loan application~~. *referral*. If you
31 wish to report a complaint about this loan transaction, you may
32 contact the Department of Business Oversight, Division of
33 Corporations at 1-866-ASK-CORP (1-866-275-2677), or file your
34 complaint online at www.dbo.ca.gov.”

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.

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