

Introduced by Senator BlockFebruary 17, 2015

An act to amend Sections 22372 and 22374 of the Financial Code, relating to consumer loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 235, as introduced, Block. Small dollar loans: finder duties and compensation

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders by the Commissioner of Business Oversight and makes a willful violation of its provisions a crime. Existing law establishes, until January 1, 2018, 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 administered by the commissioner.

Existing law authorizes a licensee in the program to use the services of finders, as defined, to bring licensees and prospective borrowers together, at the finder's place of business, for the purpose of negotiating loan contracts, subject to a written agreement meeting specified requirements.

This bill would expand the services that a finder is authorized to perform to include, among other things, disbursement of loan proceeds to, and receipt of loan payments from, the borrower.

Existing law establishes a maximum finders' fee of \$45 per loan for the first 40 loans originated at the finder's location per month, and \$40 per loan for loans thereafter during that month.

This bill would delete those maximums and would authorize payment of finder compensation pursuant to a schedule that is mutually agreed to by the licensee and the finder and would make conforming changes.

Because a willful violation of these provisions would be a crime, this 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 22372 of the Financial Code is amended
2 to read:

3 22372. (a) A finder may perform one or more of the following
4 services for a licensee at the finder’s physical location for business:

5 (1) Distributing, circulating, using, or publishing preprinted
6 brochures, flyers, factsheets, or other written materials relating to
7 loans that the licensee may make or negotiate and that have been
8 reviewed and approved in writing by the licensee prior to their
9 being distributed, circulated, or published.

10 (2) Providing written factual information about loan terms,
11 conditions, or qualification requirements to a prospective borrower
12 that has been either prepared by the licensee or reviewed and
13 approved in writing by the licensee. A finder may discuss that
14 information with a prospective borrower in general terms, but may
15 not provide counseling or advice to a prospective borrower.

16 (3) Notifying a prospective borrower of the information needed
17 in order to complete a loan application without providing
18 counseling or advice to a prospective borrower.

19 (4) Entering information provided by the prospective borrower
20 on a preprinted or electronic application form or onto a
21 preformatted computer database without providing counseling or
22 advice to a prospective borrower.

23 (5) Assembling credit applications and other materials obtained
24 in the course of a credit application transaction for submission to
25 the licensee.

1 (6) Contacting the licensee to determine the status of a loan
2 application.

3 (7) Communicating a response that is returned by the licensee's
4 automated underwriting system to a borrower or a prospective
5 borrower.

6 (8) Obtaining a borrower's signature on documents prepared
7 by the licensee and delivering final copies of the documents to the
8 borrower.

9 (9) *Providing the following services on behalf of the licensee
10 for any loan for which the finder performed finding activities:*

11 (A) *Disbursing loan proceeds to a borrower, if this method of
12 disbursement is acceptable to the borrower. Any loan disbursement
13 made by a finder under this subdivision shall be deemed made by
14 the licensee on the date the funds are disbursed or otherwise made
15 available by the finder to the borrower.*

16 (B) *Receiving loan payment or payments from the borrower, if
17 this method of payment is acceptable to the borrower.*

18 (i) *Any loan payment made by a borrower to a finder under this
19 subdivision shall be applied to the borrower's loan and deemed
20 received by the licensee as of the date the payment is received by
21 the finder.*

22 (ii) *A finder who receives loan payments under this subdivision
23 shall deliver or cause to be delivered to the borrower at the time
24 that the payment is made by the borrower, a plain and complete
25 receipt showing all of the following:*

26 (I) *The date of payment.*

27 (II) *The total payment amount made.*

28 (III) *The corresponding loan account upon which the payment
29 is being applied.*

30 (iii) *A borrower who submits a loan payment to a finder under
31 this subdivision shall not be liable for any failure or delay by the
32 finder in transmitting the payment to the licensee.*

33 (C) *Providing any notice or disclosure required to be provided
34 to the borrower by the licensee.*

35 (b) A finder shall not engage in any of the following activities:

36 (1) Providing counseling or advice to a borrower or prospective
37 borrower.

38 (2) Providing loan-related marketing material that has not
39 previously been approved by the licensee to a borrower or a
40 prospective borrower.

1 (3) Interpreting or explaining the relevance, significance, or
2 effect of any of the marketing materials or loan documents the
3 finder provides to a borrower or prospective borrower.

4 (c) Any person who performs one or more of the following
5 activities is a broker within the meaning of Section 22004 rather
6 than a finder within the meaning of this section:

7 (1) Negotiating the price, length, or any other loan term between
8 a licensee and a prospective borrower.

9 (2) Advising either a prospective borrower or a licensee as to
10 any loan term.

11 (3) Offering information pertaining to a single prospective
12 borrower to more than one licensee, except that, if a licensee has
13 declined to offer a loan to a prospective borrower and has so
14 notified that prospective borrower in writing, the person may then
15 offer information pertaining to a single prospective borrower to
16 another licensee with which it has a finder’s agreement.

17 (4) Personally contacting or providing services to a borrower
18 or prospective borrower at any place other than the finder’s
19 physical location for business.

20 (d) A finder shall comply with all laws applicable to the licensee
21 that impose requirements upon the licensee for safeguards for
22 information security.

23 SEC. 2. Section 22374 of the Financial Code is amended to
24 read:

25 22374. (a) A finder may be compensated by the licensee
26 pursuant to the written agreement between the licensee and the
27 finder, as described in Section 22376. *Compensation may be paid*
28 *in accordance with a compensation schedule that is mutually*
29 *agreed to by the licensee and the finder.*

30 (b) ~~The~~ *Notwithstanding subdivision (a), the compensation of*
31 *a finder by a licensee shall be subject to all of the following*
32 *requirements:*

33 (1) *No-fee compensation shall be paid to a finder in connection*
34 *with a loan application until and unless that loan is consummated.*

35 (2) *No-fee compensation shall be paid to a finder based upon*
36 *the principal amount of the loan.*

37 ~~(3) No fee paid to a finder shall exceed the following amounts:~~

38 ~~(A) Forty-five dollars (\$45) per loan for the first 40 loans~~
39 ~~originated each month at the finder’s location.~~

1 ~~(B) Forty dollars (\$40) per loan for any subsequent loans~~
2 ~~originated during that month at the finder's location.~~

3 ~~(4)~~

4 (3) The finder's location for services under this article and other
5 information required by Section 22375 has been reported to the
6 commissioner and the finder has not been barred from providing
7 services at that location by the commissioner.

8 (c) No licensee shall, directly or indirectly, pass on to a borrower
9 any ~~fee, fee or other compensation~~, or any portion of any ~~fee, fee~~
10 ~~or other compensation~~, that the licensee pays to a finder in
11 connection with that borrower's ~~loan or loan application~~. *loan*.

12 SEC. 3. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.