

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 235

Introduced by Senator Block
(Coauthor: Senator Hill)

February 17, 2015

An act to amend Sections ~~22372 and 22374~~ 22372, 22373, 22374, 22375, and 22377 of the Financial Code, relating to consumer loans.

LEGISLATIVE COUNSEL'S DIGEST

SB 235, as amended, Block. Small dollar loans: finder duties and ~~compensation~~ *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~~ *finder, licensed or regulated under prescribed provisions of law*, 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's~~ *finder's* 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~~ *finder*; *not to exceed \$70 per loan. The bill would require the finder to assist an applicant in obtaining answers to questions about his or her loan, and would make conforming changes. The bill would require a licensee to provide the commissioner with prescribed information relating to each finder, including, but not limited to, the finder's delinquency rate and default rate, and would authorize the commissioner to take prescribed action against a finder that is found to be in violation, including, but not limited to, disqualifying the finder from providing services under the pilot program.*

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

1 information with a prospective borrower in general terms, but may
2 not provide counseling or advice to a prospective borrower.

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

6 (4) Entering information provided by the prospective borrower
7 on a preprinted or electronic application form or onto a
8 preformatted computer database without providing counseling or
9 advice to a prospective borrower.

10 (5) Assembling credit applications and other materials obtained
11 in the course of a credit application transaction for submission to
12 the licensee.

13 (6) Contacting the licensee to determine the status of a loan
14 application.

15 (7) Communicating a response that is returned by the licensee's
16 automated underwriting system to a borrower or a prospective
17 borrower.

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

21 ~~(9) Providing~~

22 (b) *A finder that is licensed or regulated pursuant to this*
23 *division, Division 1.1 (commencing with Section 1000), Division*
24 *1.2 (commencing with Section 2000), Division 3 (commencing*
25 *with Section 12000), Division 5 (commencing with Section 14000),*
26 *Division 6 (commencing with Section 17000), Division 7*
27 *(commencing with Section 18000), Division 8 (commencing with*
28 *Section 21000), Division 10 (commencing with Section 23000), or*
29 *Division 20 (commencing with Section 50000) of this code; Chapter*
30 *5 (commencing with Section 1621) of Part 2 of Division 1 of the*
31 *Insurance Code; Chapter 1 (commencing with Section 5000) of*
32 *Division 3 of the Business and Professions Code; is an approved*
33 *agent of a person licensed pursuant to Division 1.2 (commencing*
34 *with Section 2000) of this code; or is a federally regulated bank,*
35 *thrift, or credit union, may additionally provide any of the*
36 *following services on behalf of the licensee for any loan for which*
37 *the finder performed finding activities:*

38 ~~(A)~~

39 (I) Disbursing loan proceeds to a borrower, if this method of
40 disbursement is acceptable to the borrower. ~~Any~~

1 (A) Any loan disbursement made by a finder under this
 2 subdivision shall be deemed made by the licensee on the date the
 3 funds are disbursed or otherwise made available by the finder to
 4 the borrower.

5 (B) A finder that disburses loan proceeds to a borrower shall
 6 deliver or cause to be delivered to the borrower at the time loan
 7 proceeds are disbursed a plain and complete receipt showing all
 8 of the following:

9 (i) The date of disbursement.

10 (ii) The total amount disbursed.

11 (iii) The corresponding loan account number.

12 (iv) The following statement, prominently displayed in a type
 13 size equal to or greater than the type size used to display the other
 14 items on the receipt: “If you have any questions about your loan,
 15 now or in the future, you should direct those questions to [name
 16 of licensee] by [insert at least two different ways in which a
 17 borrower may contact the licensee].”

18 ~~(B)~~

19 (2) Receiving loan payment or payments from the borrower, if
 20 this method of payment is acceptable to the borrower.

21 ~~(i)~~

22 (A) Any loan payment made by a borrower to a finder under
 23 this subdivision shall be applied to the borrower’s loan and deemed
 24 received by the licensee as of the date the payment is received by
 25 the finder.

26 ~~(ii)~~

27 (B) A finder ~~who~~ that receives loan payments under this
 28 subdivision shall deliver or cause to be delivered to the borrower
 29 at the time that the payment is made by the borrower, a plain and
 30 complete receipt showing all of the following:

31 ~~(i)~~

32 (i) The date of payment.

33 ~~(ii)~~

34 (ii) The total payment amount made.

35 ~~(iii)~~

36 (iii) The corresponding loan account number upon which the
 37 payment is being applied.

38 (iv) The following statement, prominently displayed in a type
 39 size equal to or greater than the type size used to display the other
 40 items on the receipt: “If you have any questions about your loan,

1 *now or in the future, you should direct those questions to [name*
2 *of licensee] by [insert at least two different ways in which a*
3 *borrower may contact the licensee].”*

4 ~~(iii)~~

5 (C) A borrower who submits a loan payment to a finder under
6 this subdivision shall not be liable for any failure or delay by the
7 finder in transmitting the payment to the licensee.

8 (D) *A finder that disburses or receives loan payments pursuant*
9 *to this subdivision shall maintain records of all disbursements*
10 *made and loan payments received for a period of at least two years*
11 *or until one month following the completion of a regular*
12 *examination by the commissioner, whichever is later.*

13 ~~(E)~~

14 (3) Providing any notice or disclosure required to be provided
15 to the borrower by the licensee.

16 ~~(b)~~

17 (c) A finder shall not engage in any of the following activities:

18 (1) Providing counseling or advice to a borrower or prospective
19 borrower.

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

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

26 ~~(e)~~

27 (d) Any person who performs one or more of the following
28 activities is a broker within the meaning of Section 22004 rather
29 than a finder within the meaning of this section:

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

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

34 (3) Offering information pertaining to a single prospective
35 borrower to more than one licensee, except that, if a licensee has
36 declined to offer a loan to a prospective borrower and has so
37 notified that prospective borrower in writing, the person may then
38 offer information pertaining to a single prospective borrower to
39 another licensee with which it has a finder’s agreement.

1 (4) Personally contacting or providing services to a borrower
2 or prospective borrower at any place other than the finder's
3 physical location for business.

4 ~~(d)~~

5 (e) A finder shall comply with all laws applicable to the licensee
6 that impose requirements upon the licensee for safeguards for
7 information security.

8 *SEC. 2. Section 22373 of the Financial Code is amended to*
9 *read:*

10 22373. (a) At the time the finder receives or processes an
11 application for a program loan, the finder shall provide the
12 following statement to the applicant, on behalf of the licensee, in
13 no smaller than 10-point type, and shall ask the applicant to
14 acknowledge receipt of the statement in writing:

15

16 “Your loan application has been referred to us by [Name of
17 Finder]. We may pay a fee to [Name of Finder] for the successful
18 referral of your loan application. IF YOU ARE APPROVED FOR
19 THE LOAN, [NAME OF LICENSEE] WILL BECOME YOUR
20 LENDER, AND YOU WILL BE BUILDING A RELATIONSHIP
21 WITH [NAME OF LICENSEE]. *If you have any questions about*
22 *your loan, now or in the future, you should direct those questions*
23 *to [name of licensee] by [insert at least two different ways in which*
24 *a borrower may contact the licensee]. If you wish to report a*
25 *complaint about [Name of Finder] or [Name of Licensee] regarding*
26 *this loan transaction, you may contact the Department of Business*
27 *Oversight, Division of Corporations at 1-866-ASK-CORP*
28 *(1-866-275-2677), or file your complaint online at*
29 *www.corp.ca.gov.”*

30

31 (b) *If the loan applicant has questions about the loan that the*
32 *finder is not permitted to answer, the finder shall make a good*
33 *faith effort to assist the applicant in making direct contact with*
34 *the lender before the loan is consummated. This good faith effort*
35 *shall, at a minimum, consist of assisting the applicant in*
36 *communicating with the lender in real time via telephone, video*
37 *chat, or instant messaging.*

38 ~~(b)~~

39 (c) If the loan is consummated, the licensee shall provide the
40 borrower a written copy of the disclosure notice within two weeks

1 following the date of the loan consummation. A licensee may
2 include the disclosure within its loan contract, or may provide it
3 as a separate document to the borrower, via any means acceptable
4 to the borrower.

5 ~~SEC. 2.~~

6 SEC. 3. Section 22374 of the Financial Code is amended to
7 read:

8 22374. (a) A finder may be compensated by the licensee
9 pursuant to the written agreement between the licensee and the
10 finder, as described in Section 22376. Compensation may be paid
11 in accordance with a compensation schedule that is mutually agreed
12 to by the licensee and the finder.

13 (b) Notwithstanding subdivision (a), the compensation of a
14 finder by a licensee shall be subject to all of the following
15 requirements:

16 (1) No compensation shall be paid to a finder in connection with
17 a loan application unless that loan is consummated.

18 (2) No compensation shall be paid to a finder based upon the
19 principal amount of the loan.

20 (3) *The total compensation paid by a licensee to a finder over*
21 *the life of a loan shall not exceed the sum of the origination fee*
22 *and interest charges paid by the borrower in connection with that*
23 *loan.*

24 (4) *Subject to the limitations set forth in paragraphs (1) to (3),*
25 *inclusive, the total compensation paid by a licensee to a finder*
26 *shall not exceed seventy dollars (\$70) per loan, whether paid at*
27 *the time of consummation, over installments, or in a manner*
28 *otherwise agreed upon by the licensee and the finder.*

29 ~~(3)~~

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

34 (c) No licensee shall, directly or indirectly, pass on to a borrower
35 any fee or other compensation, or any portion of any fee or other
36 compensation, that the licensee pays to a finder in connection with
37 that borrower's loan.

38 SEC. 4. Section 22375 of the Financial Code is amended to
39 read:

1 22375. A licensee that utilizes the service of a finder shall do
2 all of the following:

3 (a) Notify the commissioner within 15 days of entering into a
4 contract with a finder, on a form acceptable to the commissioner,
5 regarding all of the following:

6 (1) ~~The name and business address~~ *name, business address, and*
7 *licensing details* of the finder and all locations at which the finder
8 will perform services under this article.

9 (2) The name and contact information for an employee of the
10 finder who is knowledgeable about, and has the authority to
11 execute, the contract governing the business relationship between
12 the finder and the licensee.

13 (3) The name and contact information for one or more
14 employees of the finder who are responsible for that finder's
15 finding activities on behalf of the licensee.

16 (4) A list of the activities the finder shall perform on behalf of
17 the licensee.

18 (5) Any other information requested by the commissioner.

19 (b) Pay an annual finder registration fee to the commissioner
20 in an amount to be established by the commissioner by regulation
21 for each finder utilized by the licensee.

22 (c) Submit an annual report to the commissioner ~~including any~~
23 *including, for each finder, delinquency and default rates, number*
24 *and dollar amount of late fees assessed to borrowers on*
25 *consummated loans, and any other* information pertaining to each
26 finder and the licensee's relationship and business arrangements
27 with each finder as the commissioner may by regulation require.

28 *SEC. 5. Section 22377 of the Financial Code is amended to*
29 *read:*

30 22377. (a) The commissioner may examine the operations of
31 each licensee and each finder to ensure that the activities of the
32 licensee and the finder are in compliance with this article. The
33 costs of the commissioner's examination of each finder shall be
34 attributed to the commissioner's examination of the licensee. Any
35 violation of this article by a finder or a finder's employee shall be
36 attributed to the finance lender with whom it has entered into an
37 agreement for purposes of determining the licensee's compliance
38 with this division.

39 (b) Upon a determination that a finder has acted in violation of
40 this article, or any implementing regulation, *or upon a*

1 *determination that it would be warranted by the data reported to*
2 *the commissioner pursuant to subdivision (c) of Section 22375 for*
3 *any finder, the commissioner ~~shall have the authority to~~ may*
4 *disqualify a finder from performing services under this article, bar*
5 *a finder from performing services at one or more specific locations*
6 *of that finder, terminate a written agreement between a finder and*
7 *a licensee, and, if the commissioner deems that action in the public*
8 *interest, prohibit the use of that finder by all licensees accepted to*
9 *participate in the pilot program.*

10 (c) In addition to any other penalty allowed by law, the
11 commissioner may impose an administrative penalty up to two
12 thousand five hundred dollars (\$2,500) for violations of this article
13 committed by a finder.

14 ~~SEC. 3.~~

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