

AMENDMENTS TO SENATE BILL NO. 1235
AS AMENDED IN ASSEMBLY JUNE 13, 2018

Amendment 1

In the title, in line 1, after the first “to” insert:

amend Section 22159 of, to add Section 22780.1 to, and to

Amendment 2

In the title, in line 1, strike out the second “to” and insert:

to,

Amendment 3

On page 2, before line 1, insert:

SECTION 1. Section 22159 of the Financial Code, as added by Section 56 of Chapter 475 of the Statutes of 2017, is amended to read:

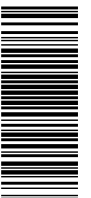
22159. (a) (1) Each finance lender, broker, and program administrator licensee shall file an annual report with the commissioner, on or before March 15th, giving 15. That report shall include the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee or authorized by the program administrator licensee within the state during the preceding calendar year for each licensed place of business, including, but not limited to, all loans made through a third-party financial institution in connection with a contractual agreement with the licensee. The individual annual reports filed pursuant to this section shall be made available to the public for inspection except, upon request in the annual report to the commissioner, the balance sheet contained in the annual report of a sole proprietor or any other nonpublicly traded person. “Nonpublicly traded person” for purposes of this section means persons with securities owned by 35 or fewer individuals. The report shall be made under oath and in the form prescribed by the commissioner.

(2) The requirement that a licensee submit an annual report that includes information on loans made through a third-party financial institution shall not be construed to mean that the licensee originated the loan described in the annual report.

(b) A licensee shall make other special reports that may be required by the commissioner.

(c) The commissioner may require a licensee that employs one or more mortgage loan originators to submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in the form and shall contain the information as the Nationwide Mortgage Licensing System and Registry may require.

(d) The commissioner may by rule or order require a mortgage loan originator to submit reports of condition to the Nationwide Mortgage Licensing System and Registry, in lieu of the reports of condition required of his or her employer pursuant to subdivision (c).



(e) This section shall become operative on January 1, 2019.

SEC. 2. Section 22780.1 is added to the Financial Code, to read:

22780.1. A violation of Division 9.5 (commencing with Section 22800) by a licensee shall constitute a violation of this division.

Amendment 4

On page 2, in line 1, strike out "SECTION 1." and insert:

SEC. 3.

Amendment 5

On page 2, in line 10, strike out "in an amount of five thousand dollars (\$5,000) or more,"

Amendment 6

On page 2, between lines 15 and 16, insert:

(c) "Asset-based lending" means a transaction in which advances are made from time to time contingent on a recipient providing as collateral a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not yet been made.

Amendment 7

On page 2, in line 16, strike out "(c)" and insert:

(d)

Amendment 8

On page 2, in line 17, after the first comma insert:

asset-based lending,

Amendment 9

On page 2, in line 17, strike out "or"

Amendment 10

On page 2, in line 18, strike out “plan” and insert:

plan, or lease financing transaction

Amendment 11

On page 3, in line 6, strike out “(d)” and insert:

(e)

Amendment 12

On page 3, in line 11, strike out “(e)” and insert:

(f)

Amendment 13

On page 3, between lines 26 and 27, insert:

(g) “Commissioner” means the Commissioner of Business Oversight.

Amendment 14

On page 3, in line 27, strike out “(f)” and insert:

(h)

Amendment 15

On page 3, below line 38, insert:

(i) “Factoring” means an accounts receivable purchase transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not yet been made.

(j) (1) “Lease financing” means providing a lease for goods if the lease provides for a purchase option at a fixed price at the end of the lease term.

(2) Notwithstanding paragraph (1), “lease financing” does not include leases in which the lessor selects, manufactures, or supplies the leased goods, unless the lease provides for a purchase option at a fixed price at the end of the lease term and one of the following is met:

(A) The lease was approved before execution by a third party, with the intent that the third party will purchase the leased property or rights to receive lease payments.

(B) The lease was drafted subject to criteria provided or approved by a third party, with the intent that the third party will purchase the leased property or rights to receive lease payments.

(C) A third party's intent to purchase the leased property or rights to receive lease payments shall be presumed if the third party purchases the leased property or rights to receive lease payments.

Amendment 16

On page 4, in line 1, strike out "(g)" and insert:

(k)

Amendment 17

On page 4, in line 4, strike out "(h)" and insert:

(l)

Amendment 18

On page 4, in line 7, strike out "(i)" and insert:

(m)

Amendment 19

On page 4, in line 13, after the period insert:

"Provider" shall not include a nondepository institution providing only technology services for a depository institution's branded online financing platform while having no interaction with that depository institution's customers.

Amendment 20

On page 4, in line 14, strike out "(j)" and insert:

(n)

Amendment 21

On page 4, strike out lines 17 to 40, inclusive, strike out pages 5 to 7, inclusive, and insert:

22801. This division does not apply to any of the following:

(a) A provider that is a depository institution.

(b) A provider that is a lender regulated under the federal Farm Credit Act (12 U.S.C. Sec. 2001 et seq.).

(c) A commercial financing transaction secured by real property.

(d) A commercial financing transaction in which the recipient is a dealer, as defined by Section 285 of the Vehicle Code, or an affiliate of such a dealer, or a vehicle rental company, or an affiliate of such a company, pursuant to a specific commercial financing offer or commercial open-end credit plan greater than fifty thousand dollars (\$50,000), including any commercial loan made pursuant to such a commercial financing transaction.

(e) Any person who makes five or fewer commercial financing transactions in California in a 12-month period, and the commercial financing transactions are incidental to the business of the person relying upon the exemption.

22802. (a) A provider subject to this division, within the meaning of Section 22801, shall disclose all of the information in subdivision (b) or in Section 22803, if applicable, to a recipient at the time of extending a specific commercial financing offer to that recipient, and shall obtain the recipient's signature on such a disclosure before consummating the commercial financing transaction.

(b) Except as provided in Section 22803, a provider subject to this division shall disclose all of the following:

- (1) The total amount of funds provided.
- (2) The total dollar cost of the financing.
- (3) The term or estimated term.
- (4) The method, frequency, and amount of payments.
- (5) A description of prepayment policies.
- (6) The total cost of the financing expressed as an annualized rate.

(c) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

22802. (a) A provider subject to this division, within the meaning of Section 22801, shall disclose all of the information in subdivision (b) or in Section 22803, if applicable, to a recipient at the time of extending a specific commercial financing offer to that recipient, and shall obtain the recipient's signature on such a disclosure before consummating the commercial financing transaction.

(b) Except as provided in Section 22803, a provider subject to this division shall disclose all of the following:

- (1) The total amount of funds provided.
- (2) The total dollar cost of the financing.
- (3) The term or estimated term.
- (4) The method, frequency, and amount of payments.
- (5) A description of prepayment policies.

(c) This section shall become operative on January 1, 2024.

22803. (a) As an alternative to the disclosures required in subdivision (b) of Section 22802, a provider who offers commercial financing that is factoring or asset-based lending and that offers the recipient an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement, may provide the following disclosures as an example of a transaction that could occur under the general agreement for a given amount of accounts receivables:

- (1) An amount financed.

- (2) The total dollar cost.
- (3) The term or estimated term.
- (4) The method, frequency, and amount of payments.
- (5) A description of prepayment policies.
- (6) The total cost of the financing expressed as an annualized rate.

(b) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

22803. (a) As an alternative to the disclosures required in subdivision (b) of Section 22802, a provider who offers commercial financing that is factoring or asset-based lending and that offers the recipient an agreement that describes the general terms and conditions of the commercial financing transaction that will occur under the agreement, may provide the following disclosures as an example of a transaction that could occur under the general agreement for a given amount of accounts receivables:

- (1) An amount financed.
- (2) The total dollar cost.
- (3) The term or estimated term.
- (4) The method, frequency, and amount of payments.
- (5) A description of prepayment policies.

(b) This section shall become operative on January 1, 2024.

22804. (a) The commissioner shall adopt regulations governing the disclosures described in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 22802 and paragraphs (1) to (5), inclusive, of subdivision (a) of Section 22803. Those regulations shall include all of the following:

(1) Definitions, contents, or methods of calculations for each of the disclosure items set forth in each applicable paragraph of subdivision (b) of Section 22802 and subdivision (a) of Section 22803.

(2) Requirements concerning the time, manner, and format of the applicable disclosures described in subdivision (b) of Section 22802 and subdivision (a) of Section 22803.

(b) The commissioner shall adopt regulations concerning the annualized rate disclosure described in paragraph (6) of subdivision (b) of Section 22802 and paragraph (6) of subdivision (a) of Section 22803. Those regulations shall include all of the following:

(1) A determination of the appropriate method to express the annualized rate disclosure.

(2) When providers shall be permitted to disclose an estimated annualized rate, and how such an estimate shall be calculated. The method of calculation determined by this paragraph shall specify the accuracy requirements and tolerance allowances for the calculation, and the types of fees and charges to be included in the calculation.

(3) Requirements concerning the time, manner, and format of the disclosure.

(c) A provider shall not be required to comply with the disclosure requirements of this division until the final regulations are adopted by the commissioner pursuant to this section and become effective on the applicable date described in Section 11343.4 of the Government Code.

22805. Any provider who is subject to licensure under the California Financing Law (Division 9 (commencing with Section 22000)) shall, as of the date that the final regulations adopted by the commissioner pursuant to Section 22804 become effective

and from that point thereafter, be subject to examination and enforcement by the commissioner under California Financing Law (Division 9 (commencing with Section 22000)) for any violation of this division or any rule or order adopted pursuant to this division.

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.

PROPOSED AMENDMENTS TO SENATE BILL NO. 1235

AMENDED IN ASSEMBLY JUNE 13, 2018

AMENDED IN SENATE MAY 10, 2018

AMENDED IN SENATE APRIL 25, 2018

AMENDED IN SENATE APRIL 9, 2018

SENATE BILL

No. 1235



RN1817705

Introduced by Senator Glazer

February 15, 2018

An act to *amend Section 22159 of, to add Section 22780.1 to, and to add Division 9.5 (commencing with Section 22800) to* the Financial Code, relating to commercial financing.

Amendments 1 & 2

LEGISLATIVE COUNSEL'S DIGEST

SB 1235, as amended, Glazer. Commercial financing: disclosures.

~~Existing~~

(1) *Existing* law, the California Financing Law (CFL), provides for the licensure and regulation of finance lenders and brokers and, beginning on January 1, 2019, program administrators, by the Commissioner of Business Oversight. ~~The CFL prohibits anyone from engaging in the business of a finance lender or broker without obtaining a license. Existing law defines a finance lender as any person who is engaged in making consumer loans or commercial loans, as defined. The CFL prohibits a licensee from making a materially false or misleading statement to a borrower about the terms or conditions of a loan. The CFL requires a finance lender, broker, and, beginning on January 1, 2019, program administrator licensee to file an annual report with the commissioner, on or before March 15, containing~~

relevant information that the commissioner may specify. The CFL requires the annual report to be made under oath.

This bill would require a licensee to include in the report information on all loans made through 3rd-party financial institution in connection with a contractual agreement with the licensee. By expanding the existing crime of perjury, this bill would impose a state-mandated local program.

(2) The CFL prohibits anyone from engaging in the business of a finance lender or broker without obtaining a license. Existing law defines a finance lender as any person who is engaged in making consumer loans or commercial loans, as defined. The CFL prohibits a licensee from making a materially false or misleading statement to a borrower about the terms or conditions of a loan. The CFL authorizes the commissioner to bring an action to enjoin, as specified, against a person who, in the commissioner's estimation, has violated or is about to violate the CFL, and authorizes the imposition of civil penalties to that effect. A willful violation of the CFL is a crime, except as specified.

This bill would require a provider who facilitates commercial financing to a recipient, as defined, to disclose specified information relating to that transaction to the recipient at the time of extending a specific offer of commercial financing, and to obtain the recipient's signature on that disclosure before consummating the commercial financing transaction. The bill would require that disclosure to include specified information, including the total amount of funds provided, information related to the payments to be made, and the total dollar cost of the financing. The bill would, until January 1, ~~2023~~, 2024, additionally require a provider of a commercial loan, commercial open-end credit plan, or accounts receivable purchase transaction that requires a recipient to forward or otherwise sell to the provider a portion of receipts that are collected by the recipient to disclose the estimated annual cost of capital and the estimated annualized cost of capital. The bill would provide that the provisions of this bill apply to a provider who consummates or arranges more than 5 commercial financing transactions during a calendar year to a recipient. to disclose the total cost of financing expressed as an annualized rate. The bill would authorize a provider who offers financing that is factoring or asset-based lending to, in lieu of those disclosure requirements, provide an alternative disclosure that meets specified requirements, including that the disclosure may be based on an example of a transaction that could occur under the general agreement for a given amount of accounts

receivables. The bill would require the commissioner to adopt regulations governing these disclosure requirements, and would require those regulations to include specified information and determinations. The bill would provide that a provider is not subject to these provisions until those regulations become effective. The bill would ~~specifically~~ provide that the provisions of this bill do not apply to *specified entities or financing arrangements, including a provider who is a depository institution, which this bill would define to include specified state and federal financial institutions, a commercial financing transaction secured by real property, and a commercial financing transaction in which the recipient is a dealer or vehicle rental company and meets specified requirements, or a provider who makes 5 or fewer commercial financing transactions in California during a 12-month period and meets other requirements.*

This bill would require a provider who is required to be licensed under the CFL to be subject to the examination and enforcement authority of the commissioner granted under the CFL with respect to any violations of these provisions, and would make a conforming change to that effect. By expanding the scope of an existing crime with regard to willful violations of the CFL, this bill would impose a state-mandated local program.

(3) 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: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- + SECTION 1. Section 22159 of the Financial Code, as added
- + by Section 56 of Chapter 475 of the Statutes of 2017, is amended
- + to read:
- + 22159. (a) (1) Each finance lender, broker, and program
- + administrator licensee shall file an annual report with the
- + commissioner, on or before March 15th, ~~giving 15.~~ That report
- + shall include the relevant information that the commissioner
- + reasonably requires concerning the business and operations

Amendment 3

+ conducted by the licensee or authorized by the program
+ administrator licensee within the state during the preceding
+ calendar year for each licensed place of ~~business~~. *business*,
+ *including, but not limited to, all loans made through a third-party*
+ *financial institution in connection with a contractual agreement*
+ *with the licensee.* The individual annual reports filed pursuant to
+ this section shall be made available to the public for inspection
+ except, upon request in the annual report to the commissioner, the
+ balance sheet contained in the annual report of a sole proprietor
+ or any other nonpublicly traded person. “Nonpublicly traded
+ person” for purposes of this section means persons with securities
+ owned by 35 or fewer individuals. The report shall be made under
+ oath and in the form prescribed by the commissioner.

+ (2) *The requirement that a licensee submit an annual report*
+ *that includes information on loans made through a third-party*
+ *financial institution shall not be construed to mean that the licensee*
+ *originated the loan described in the annual report.*

+ (b) A licensee shall make other special reports that may be
+ required by the commissioner.

+ (c) The commissioner may require a licensee that employs one
+ or more mortgage loan originators to submit to the Nationwide
+ Mortgage Licensing System and Registry reports of condition,
+ which shall be in the form and shall contain the information as the
+ Nationwide Mortgage Licensing System and Registry may require.

+ (d) The commissioner may by rule or order require a mortgage
+ loan originator to submit reports of condition to the Nationwide
+ Mortgage Licensing System and Registry, in lieu of the reports of
+ condition required of his or her employer pursuant to subdivision
+ (c).

+ (e) This section shall become operative on January 1, 2019.

+ SEC. 2. *Section 22780.1 is added to the Financial Code, to*
+ *read:*

+ 22780.1. *A violation of Division 9.5 (commencing with Section*
+ *22800) by a licensee shall constitute a violation of this division.*

1 SECTION 1.

2 SEC. 3. Division 9.5 (commencing with Section 22800) is
3 added to the Financial Code, to read:

Amendment 4

Page 2 4 DIVISION 9.5. COMMERCIAL FINANCING DISCLOSURES
+
6 22800. For purposes of this division:
7 (a) “Account” means a right to a payment of a monetary
8 obligation.
9 (b) “Accounts receivable purchase transaction” means a
10 transaction ~~in an amount of five thousand dollars (\$5,000) or more,~~
11 as part of an agreement requiring a recipient to forward or
12 otherwise sell to the provider all or a portion of accounts, payment
13 intangibles, or cash receipts that are owed to the recipient or are
14 collected by the recipient during a specified period or in a specified
15 amount.
+ (c) “Asset-based lending” means a transaction in which
+ advances are made from time to time contingent on a recipient
+ providing as collateral a legally enforceable claim for payment
+ held by a recipient for goods the recipient has supplied or services
+ the recipient has rendered that have been ordered but for which
+ payment has not yet been made.
16 (e)
+ (d) (1) “Commercial financing” means an accounts receivable
17 purchase transaction, *asset-based lending*, commercial loan, ~~or~~
18 commercial open-end credit ~~plan~~ *plan*, or *lease financing*
+ *transaction* intended by the recipient for use primarily for other
19 than personal, family, or household purposes.
20 (2) For purposes of determining whether financing is commercial
21 financing within the meaning of this subdivision, the provider may
22 rely on any written statement of intended purposes signed by the
Page 3 1 recipient. The statement may be a separate statement signed by
2 the recipient or may be contained in a loan application or other
3 document signed by the recipient. The provider shall not be
4 required to ascertain that the proceeds of the commercial financing
5 are used in accordance with the statement of intended purposes.
6 (d)
+ (e) “Commercial loan” means a loan of a principal amount of
7 five thousand dollars (\$5,000) or more, or any loan under an
8 open-end credit plan, the proceeds of which are intended by the
9 recipient for use primarily for other than personal, family, or
10 household purposes.
11 (e)

Amendment 5

Amendment 6

Amendment 7

Amendments 8 & 9
Amendment 10

Amendment 11

Amendment 12

PROPOSED AMENDMENTS

SB 1235

— 6 —

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SUBSTANTIVE

Page 3 + (f) “Commercial open-end credit plan” means a provider’s plan
12 for making open-end loans pursuant to a loan agreement that sets
13 forth the terms and conditions governing the use of the open-end
14 credit program, and provides that:
15 (1) The recipient may use the open-end credit program to obtain
16 money, goods, labor, or services or credit, and the provider makes
17 open-end loans to the recipient for the purpose of paying money
18 to, or at the direction of, the recipient or paying obligations that
19 the recipient creates through use of the open-end credit program.
20 (2) The amount of each advance and the charges and other
21 permitted costs are debited to an account.
22 (3) The charges are computed from time to time on the unpaid
23 balances of the recipient’s account, excluding from the computation
24 any unpaid charges other than permitted fees, costs, and expenses.
25 (4) The recipient has the privilege of paying the account in full
26 at any time.
+ (g) “*Commissioner*” means the Commissioner of Business
+ Oversight.
27 (f)
+ (h) “Depository institution” means any of the following:
28 (1) A bank, trust company, or industrial loan company doing
29 business under the authority of, or in accordance with, a license,
30 certificate, or charter issued by the United States, this state, or any
31 other state, district, territory, or commonwealth of the United States
32 that is authorized to transact business in this state.
33 (2) A federally chartered savings and loan association, federal
34 savings bank, or federal credit union that is authorized to transact
35 business in this state.
36 (3) A savings and loan association, savings bank, or credit union
37 organized under the laws of this or any other state that is authorized
38 to transact business in this state.
+ (i) “*Factoring*” means an accounts receivable purchase
+ transaction that includes an agreement to purchase, transfer, or
+ sell a legally enforceable claim for payment held by a recipient
+ for goods the recipient has supplied or services the recipient has
+ rendered that have been ordered but for which payment has not
+ yet been made.
+ (j) (1) “*Lease financing*” means providing a lease for goods if
+ the lease provides for a purchase option at a fixed price at the end
+ of the lease term.

Amendment 13

Amendment 14

Amendment 15

+ (2) *Notwithstanding paragraph (1), “lease financing” does not*
 + *include leases in which the lessor selects, manufactures, or supplies*
 + *the leased goods, unless the lease provides for a purchase option*
 + *at a fixed price at the end of the lease term and one of the following*
 + *is met:*

+ (A) *The lease was approved before execution by a third party,*
 + *with the intent that the third party will purchase the leased property*
 + *or rights to receive lease payments.*

+ (B) *The lease was drafted subject to criteria provided or*
 + *approved by a third party, with the intent that the third party will*
 + *purchase the leased property or rights to receive lease payments.*

+ (C) *A third party’s intent to purchase the leased property or*
 + *rights to receive lease payments shall be presumed if the third*
 + *party purchases the leased property or rights to receive lease*
 + *payments.*

Page 4

1 ~~(g)~~

+ (k) *“Payment intangible” means a general intangible under*
 2 *which the account debtor’s principal obligation is a monetary*
 3 *obligation.*

4 ~~(h)~~

+ (l) *“Person” means an individual, a corporation, a partnership,*
 5 *a limited liability company, a joint venture, an association, a joint*
 6 *stock company, a trust, or an unincorporated organization.*

7 ~~(i)~~

+ (m) *“Provider” means a person who extends a specific offer of*
 8 *commercial financing to a recipient. “Provider” also includes a*
 9 *nondepository institution, which enters into a written agreement*
 10 *with a depository institution to arrange for the extension of*
 11 *commercial financing by the depository institution to a recipient*
 12 *via an online lending platform administered by the nondepository*
 13 *institution. “Provider” shall not include a nondepository institution*
 + *providing only technology services for a depository institution’s*
 + *branded online financing platform while having no interaction*
 + *with that depository institution’s customers.*

14 ~~(j)~~

+ (n) *“Recipient” means a person who is presented a specific*
 15 *commercial financing offer by a provider that is equal to or less*
 16 *than five hundred thousand dollars (\$500,000).*

17 ~~22801. (a) Except as provided in subdivisions (b) and (c), a~~
 18 ~~provider is subject to this division if the provider consummates or~~

Amendment 16

Amendment 17

Amendment 18

Amendment 19

Amendment 20

Amendment 21

Page 4 19 arranges more than five commercial financing transactions during
20 a calendar year to a recipient.
21 ~~(b) Notwithstanding subdivision (a), a provider who otherwise~~
22 ~~meets the requirements of subdivision (a) is not subject to this~~
23 ~~division if the provider is a depository institution.~~
24 ~~(c) This division shall not apply to either of the following:~~
25 ~~(1) A commercial financing transaction secured by real property.~~
26 ~~(2) A commercial financing transaction governed by Uniform~~
27 ~~Commercial Code—Leases (Division 10 (commencing with~~
28 ~~Section 10101) of the Commercial Code) or that otherwise arises~~
29 ~~from the leasing or rental of personal property.~~
30 ~~22802. (a) A provider subject to this division, within the~~
31 ~~meaning of Section 22801, shall disclose all of the information in~~
32 ~~subdivision (b) to a recipient at the time of extending a specific~~
33 ~~commercial financing offer to that recipient, and shall obtain the~~
34 ~~recipient's signature on such a disclosure before consummating~~
35 ~~the commercial financing transaction.~~
36 ~~(b) A provider subject to this division shall provide all of the~~
37 ~~following disclosures:~~
38 ~~(1) The principal loan amount or the purchase price, less any~~
39 ~~fees paid to or retained by the provider or an affiliate of the~~
40 ~~provider for originating or processing the commercial financing~~
Page 5 1 ~~transaction. For a commercial open-end credit plan the principal~~
2 ~~loan amount shall be the maximum amount of credit available for~~
3 ~~draw by the borrower under the commercial open-end credit plan.~~
4 ~~This shall be labeled "Total Amount of Funds Provided."~~
5 ~~(2) The total amount of funds to be paid by the recipient of the~~
6 ~~commercial financing pursuant to the financing agreement,~~
7 ~~assuming all payments are made when required. This amount shall~~
8 ~~include all unavoidable fees and charges, including, if applicable,~~
9 ~~any fees or charges due at the time the financing is retired or paid~~
10 ~~in full. For a commercial open-end credit plan the Total of~~
11 ~~Payments shall include the total dollar costs to be charged to a~~
12 ~~borrower, based on the maximum draw amount of credit available~~
13 ~~under the open-end credit plan, assuming the borrower repays the~~
14 ~~commercial loan according to its original payment schedule, plus~~
15 ~~all required periodic and nonperiodic fees and charges that cannot~~
16 ~~be avoided by a borrower. This shall be labeled "Total of~~
17 ~~Payments." This disclosure shall clarify that "Total of Payments"~~
18

Page 5 19 does not include fees the recipient may avoid, such as late fees or
20 returned payment fees.
23 ~~(3) The total dollar cost of the commercial financing transaction,~~
24 ~~which shall be calculated by subtracting the amount of funds~~
25 ~~provided from the total of payments. This shall be labeled “Total~~
26 ~~Dollar Cost of Financing.”~~
27 ~~(4) For commercial financing with fixed periodic payments, the~~
28 ~~term of the financing in total calendar days, and for commercial~~
29 ~~financing with variable payments and no fixed term, the estimated~~
30 ~~term of the financing in total calendar days as assumed by the~~
31 ~~provider in the underwriting process. This shall be labeled “Term”~~
32 ~~or “Estimated Term.”~~
33 ~~(5) For commercial financing that has fixed, nonvariable period~~
34 ~~payment amounts: the frequency and amount of each payment.~~
35 ~~For commercial financing that has variable periodic payment~~
36 ~~amounts: a description of the method by which payments are~~
37 ~~calculated and the frequency of those payments. This disclosure~~
38 ~~shall be labeled “Payments.”~~
39 ~~(6) A statement of whether there are any costs or discounts~~
Page 6 40 ~~associated with prepayment of the commercial financing, including~~
1 ~~a reference to the paragraph in the financing agreement that creates~~
2 ~~the contractual rights of the parties related to prepayment. This~~
3 ~~disclosure shall be labeled “Prepayment.”~~
4 ~~22803. In addition to the disclosures required in 22802, the~~
5 ~~following shall be disclosed by a provider of a commercial loan,~~
6 ~~commercial open-end credit plan, or accounts receivable purchase~~
7 ~~transaction that requires a recipient to forward or otherwise sell to~~
8 ~~the provider a portion of receipts that are collected by the recipient~~
9 ~~during a specified period or in a specified amount. This section~~
10 ~~shall not apply to an accounts receivable purchase transaction that~~
11 ~~includes an agreement to purchase, transfer, or sell a legally~~
12 ~~enforceable claim for payment held by a recipient for goods~~
13 ~~supplied or services rendered, which have been ordered but for~~
14 ~~which payment has not yet been made.~~
15 ~~(a) “Estimated Annualized Cost of Capital,” which is the total~~
16 ~~cost of the capital expressed as a percentage of the amount financed~~
17 ~~and presented as an annual equivalent. The Estimated Annualized~~
21 ~~Cost of Capital shall be derived using the following steps:~~
23 ~~(1) Divide the total dollar cost of financing by the total amount~~
24 ~~of funds provided.~~

PROPOSED AMENDMENTS

SB 1235

— 10 —

RN 18 17705 17
08/14/18 04:20 PM
SUBSTANTIVE

Page 6 25 ~~(2) Multiply the result in paragraph (1) by 365.~~
26 ~~(3) Divide the result from paragraphs (1) and (2) by the term or~~
27 ~~estimated term of the financing in days.~~
28 ~~(4) Multiply the result from paragraph (3) by 100.~~
29 ~~(5) The result from paragraph (4) shall be labeled “The~~
30 ~~Estimated Annualized Cost of Capital.”~~
31 ~~(b) The “Estimated Annualized Cost of Capital” shall be rounded~~
32 ~~to the nearest whole number and shall include the following~~
33 ~~disclosure: “This estimate includes all charges and fees incurred~~
34 ~~for the financing, assuming you make all payments when scheduled~~
35 ~~and adhere to the terms of the agreement. This number is based~~
36 ~~on the estimated term. If the actual term is shorter than estimated,~~
37 ~~the annualized cost of capital may be higher than shown. If the~~
38 ~~actual term is longer than estimated, the annualized cost of capital~~
39 ~~may be lower. This is not an Annual Percentage Rate (APR).”~~
Page 7 1 This section shall remain in effect only until January 1, 2023,
2 and as of that date is repealed.
3 22803. ~~The recipient may elect to receive the disclosures~~
4 ~~required by Section 22802 in writing or electronically.~~
5 ~~(a) If the provider provides the disclosures in writing, the~~
6 ~~disclosures shall be printed in at least a 10-point font.~~
7 ~~(b) If the provider provides the disclosures electronically, they~~
8 ~~shall be provided in a format that allows the disclosures to be~~
11 ~~printed out by the recipient in at least 10-point font.~~
13 This section shall become operative on January 1, 2023.
14 22804. ~~The recipient may elect to receive the disclosures~~
15 ~~required by Sections 22802 and 22803 in writing or electronically.~~
16 ~~(a) If the provider provides the disclosures in writing, the~~
17 ~~disclosures shall be printed in at least a 10-point font.~~
18 ~~(b) If the provider provides the disclosures electronically, they~~
19 ~~shall be provided in a format that allows the disclosures to be~~
22 ~~printed out by the recipient in at least 10-point font.~~
24 This section shall remain in effect only until January 1, 2023,
25 and as of that date is repealed.
+ 22801. *This division does not apply to any of the following:*
+ (a) *A provider that is a depository institution.*
+ (b) *A provider that is a lender regulated under the federal Farm*
+ *Credit Act (12 U.S.C. Sec. 2001 et seq.).*
+ (c) *A commercial financing transaction secured by real property.*

- + (d) A commercial financing transaction in which the recipient
- + is a dealer, as defined by Section 285 of the Vehicle Code, or an
- + affiliate of such a dealer; or a vehicle rental company, or an
- + affiliate of such a company, pursuant to a specific commercial
- + financing offer or commercial open-end credit plan greater than
- + fifty thousand dollars (\$50,000), including any commercial loan
- + made pursuant to such a commercial financing transaction.
- + (e) Any person who makes five or fewer commercial financing
- + transactions in California in a 12-month period, and the
- + commercial financing transactions are incidental to the business
- + of the person relying upon the exemption.
- + 22802. (a) A provider subject to this division, within the
- + meaning of Section 22801, shall disclose all of the information in
- + subdivision (b) or in Section 22803, if applicable, to a recipient
- + at the time of extending a specific commercial financing offer to
- + that recipient, and shall obtain the recipient's signature on such
- + a disclosure before consummating the commercial financing
- + transaction.
- + (b) Except as provided in Section 22803, a provider subject to
- + this division shall disclose all of the following:
- + (1) The total amount of funds provided.
- + (2) The total dollar cost of the financing.
- + (3) The term or estimated term.
- + (4) The method, frequency, and amount of payments.
- + (5) A description of prepayment policies.
- + (6) The total cost of the financing expressed as an annualized
- + rate.
- + (c) This section shall remain in effect only until January 1, 2024,
- + and as of that date is repealed.
- + 22802. (a) A provider subject to this division, within the
- + meaning of Section 22801, shall disclose all of the information in
- + subdivision (b) or in Section 22803, if applicable, to a recipient
- + at the time of extending a specific commercial financing offer to
- + that recipient, and shall obtain the recipient's signature on such
- + a disclosure before consummating the commercial financing
- + transaction.
- + (b) Except as provided in Section 22803, a provider subject to
- + this division shall disclose all of the following:
- + (1) The total amount of funds provided.
- + (2) The total dollar cost of the financing.

- + (3) *The term or estimated term.*
- + (4) *The method, frequency, and amount of payments.*
- + (5) *A description of prepayment policies.*
- + (c) *This section shall become operative on January 1, 2024.*
- + 22803. (a) *As an alternative to the disclosures required in*
- + *subdivision (b) of Section 22802, a provider who offers commercial*
- + *financing that is factoring or asset-based lending and that offers*
- + *the recipient an agreement that describes the general terms and*
- + *conditions of the commercial financing transaction that will occur*
- + *under the agreement, may provide the following disclosures as an*
- + *example of a transaction that could occur under the general*
- + *agreement for a given amount of accounts receivables:*
- + (1) *An amount financed.*
- + (2) *The total dollar cost.*
- + (3) *The term or estimated term.*
- + (4) *The method, frequency, and amount of payments.*
- + (5) *A description of prepayment policies.*
- + (6) *The total cost of the financing expressed as an annualized*
- + *rate.*
- + (b) *This section shall remain in effect only until January 1, 2024,*
- + *and as of that date is repealed.*
- + 22803. (a) *As an alternative to the disclosures required in*
- + *subdivision (b) of Section 22802, a provider who offers commercial*
- + *financing that is factoring or asset-based lending and that offers*
- + *the recipient an agreement that describes the general terms and*
- + *conditions of the commercial financing transaction that will occur*
- + *under the agreement, may provide the following disclosures as an*
- + *example of a transaction that could occur under the general*
- + *agreement for a given amount of accounts receivables:*
- + (1) *An amount financed.*
- + (2) *The total dollar cost.*
- + (3) *The term or estimated term.*
- + (4) *The method, frequency, and amount of payments.*
- + (5) *A description of prepayment policies.*
- + (b) *This section shall become operative on January 1, 2024.*
- + 22804. (a) *The commissioner shall adopt regulations*
- + *governing the disclosures described in paragraphs (1) to (5),*
- + *inclusive, of subdivision (b) of Section 22802 and paragraphs (1)*
- + *to (5), inclusive, of subdivision (a) of Section 22803. Those*
- + *regulations shall include all of the following:*

- + (1) Definitions, contents, or methods of calculations for each
- + of the disclosure items set forth in each applicable paragraph of
- + subdivision (b) of Section 22802 and subdivision (a) of Section
- + 22803.
- + (2) Requirements concerning the time, manner, and format of
- + the applicable disclosures described in subdivision (b) of Section
- + 22802 and subdivision (a) of Section 22803.
- + (b) The commissioner shall adopt regulations concerning the
- + annualized rate disclosure described in paragraph (6) of
- + subdivision (b) of Section 22802 and paragraph (6) of subdivision
- + (a) of Section 22803. Those regulations shall include all of the
- + following:
- + (1) A determination of the appropriate method to express the
- + annualized rate disclosure.
- + (2) When providers shall be permitted to disclose an estimated
- + annualized rate, and how such an estimate shall be calculated.
- + The method of calculation determined by this paragraph shall
- + specify the accuracy requirements and tolerance allowances for
- + the calculation, and the types of fees and charges to be included
- + in the calculation.
- + (3) Requirements concerning the time, manner, and format of
- + the disclosure.
- + (c) A provider shall not be required to comply with the
- + disclosure requirements of this division until the final regulations
- + are adopted by the commissioner pursuant to this section and
- + become effective on the applicable date described in Section
- + 11343.4 of the Government Code.
- + 22805. Any provider who is subject to licensure under the
- + California Financing Law (Division 9 (commencing with Section
- + 22000)) shall, as of the date that the final regulations adopted by
- + the commissioner pursuant to Section 22804 become effective and
- + from that point thereafter, be subject to examination and
- + enforcement by the commissioner under California Financing Law
- + (Division 9 (commencing with Section 22000)) for any violation
- + of this division or any rule or order adopted pursuant to this
- + division.
- + 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

PROPOSED AMENDMENTS

SB 1235

— 14 —

- + *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.*

RN 18 17705 17
08/14/18 04:20 PM
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95