

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 15, 2015

AMENDED IN ASSEMBLY JULY 8, 2015

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 235

Introduced by Senator Block
(Coauthor: Senator Hill)
(Coauthor: Assembly Member Chiu)

February 17, 2015

An act to amend Sections 22370, 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.

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, 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.

This bill would require the licensee to develop and implement policies and procedures designed to respond to questions raised by applicants and borrowers regarding their loans, including those involving finders.

Existing law establishes a maximum 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 for certain services pursuant to a schedule that is mutually agreed to by the licensee and the finder, not to exceed \$65 per loan, plus \$2 per payment received by the finder on behalf of the licensee for the duration of the loan when the finder receives borrower loan payments on the licensee's behalf, as specified. The bill would require, if a loan applicant has questions that the finder is not permitted to answer, the finder to assist an applicant in making direct contact with the lender before the loan is consummated, and would require the licensee to ensure that a loan is not consummated until the licensee completes a 2-way communication, as defined, with the applicant. 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 upon determination that it would be warranted by reported data, 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 22370 of the Financial Code is amended
2 to read:

3 22370. (a) Any loan made pursuant to this section shall comply
4 with the following requirements:

5 (1) The loan shall be unsecured.

6 (2) Interest on the loan shall accrue on a simple-interest basis,
7 through the application of a daily periodic rate to the actual unpaid
8 principal balance each day.

9 (3) The licensee shall disclose the following to the consumer
10 in writing, in a type face no smaller than 12-point type, at the time
11 of application:

12 (A) The amount borrowed; the total dollar cost of the loan to
13 the consumer if the loan is paid back on time, including the sum
14 of the administrative fee, principal amount borrowed, and interest
15 payments; the corresponding annual percentage rate, calculated in
16 accordance with Federal Reserve Board Regulation Z (12 C.F.R.
17 226); the periodic payment amount; the delinquency fee schedule;
18 and the following statement: “Repaying your loan early will lower
19 your borrowing costs by reducing the amount of interest you will
20 pay. This loan has no prepayment penalty.”

21 (B) A statement that the consumer has the right to rescind the
22 loan by notifying the licensee of the consumer’s intent to rescind
23 the loan and returning the principal advanced by the end of the
24 business day following the date the loan is consummated.

25 (4) A licensee may provide the borrower with the disclosures
26 required by paragraph (3) in a mobile or other electronic
27 application, on which the size of the type face of the disclosure
28 can be manually modified by a prospective borrower, if the
29 prospective borrower is given the option to print the disclosure in
30 a type face of at least 12-point size or is provided by the licensee
31 with a hardcopy of the disclosure in a type face of at least 12-point
32 size before the loan is consummated.

33 (5) The loan shall have a minimum principal amount upon
34 origination of three hundred dollars (\$300) and a term of not less
35 than the following:

36 (A) Ninety days for loans whose principal balance upon
37 origination is less than five hundred dollars (\$500).

1 (B) One hundred twenty days for loans whose principal balance
2 upon origination is at least five hundred dollars (\$500), but is less
3 than one thousand five hundred dollars (\$1,500).

4 (C) One hundred eighty days for loans whose principal balance
5 upon origination is at least one thousand five hundred dollars
6 (\$1,500).

7 (b) As an alternative to the charges authorized by Section 22303
8 or 22304, a licensee approved by the commissioner to participate
9 in the program may contract for and receive charges for a loan
10 made pursuant to this section at an annual simple interest rate not
11 to exceed the following:

12 (1) The lesser of 36 percent or the sum of 32.75 percent plus
13 the United States prime lending rate, as of the date of loan
14 origination, on that portion of the unpaid principal balance of the
15 loan up to and including, but not in excess of, one thousand dollars
16 (\$1,000). The interest rate calculated as of the date of loan
17 origination shall be fixed for the life of the loan.

18 (2) The lesser of 35 percent or the sum of 28.75 percent plus
19 the United States prime lending rate, as of the date of loan
20 origination, on that portion of the unpaid principal balance of the
21 loan in excess of one thousand dollars (\$1,000), but less than two
22 thousand five hundred dollars (\$2,500). The interest rate calculated
23 as of the date of loan origination shall be fixed for the life of the
24 loan.

25 (c) (1) As to any loan made under this section, a licensee
26 approved by the commissioner to participate in the program may
27 contract for and receive an administrative fee, which shall be fully
28 earned immediately upon making the loan, in an amount not to
29 exceed the applicable of the following:

30 (A) Seven percent of the principal amount, exclusive of the
31 administrative fee, or ninety dollars (\$90), whichever is less, on
32 the first loan made to a borrower.

33 (B) Six percent of the principal amount, exclusive of the
34 administrative fee, or seventy-five dollars (\$75), whichever is less,
35 on the second and subsequent loans made to that borrower.

36 (2) A licensee shall not charge the same borrower an
37 administrative fee more than once in any four-month period.

38 (3) For purposes of this section, “refinance” means the
39 replacement or revision of an existing loan contract with a borrower
40 that results in an extension of additional principal to that borrower.

1 A licensee shall not refinance a loan made under this section, unless
2 all of the following conditions are met at the time the borrower
3 submits an application to refinance:

4 (A) The borrower has repaid at least 60 percent of the
5 outstanding principal remaining on his or her loan.

6 (B) The borrower is current on his or her outstanding loan.

7 (C) The licensee underwrites the new loan in accordance with
8 paragraph (4) of subdivision (f).

9 (D) If the loan proceeds of both the original loan and the
10 refinance loan are to be used for personal, family, or household
11 purposes, the borrower has not previously refinanced the
12 outstanding loan more than once.

13 (4) Notwithstanding paragraph (3), an administrative fee shall
14 not be contracted for or received in connection with the refinancing
15 of a loan unless at least eight months have elapsed since the receipt
16 of a previous administrative fee paid by the borrower. With the
17 exception of a loan that is refinanced, only one administrative fee
18 may be contracted for or received until the loan has been repaid
19 in full. Section 22305 shall not apply to any loan made under this
20 section.

21 (d) Notwithstanding subdivision (a) of Section 22320.5, a
22 licensee approved by the commissioner to participate in the
23 program may require reimbursement from a borrower for the actual
24 insufficient funds fees incurred by that licensee due to actions of
25 the borrower, and may contract for and receive a delinquency fee
26 that is one of the following amounts:

27 (1) For a period of delinquency of not less than seven days, an
28 amount not in excess of fourteen dollars (\$14).

29 (2) For a period of delinquency of not less than 14 days, an
30 amount not in excess of twenty dollars (\$20).

31 (e) If a licensee opts to impose a delinquency fee, it shall use
32 the delinquency fee schedule described in subdivision (d), subject
33 to all of the following:

34 (1) No more than one delinquency fee may be imposed per
35 delinquent payment.

36 (2) No more than two delinquency fees may be imposed during
37 any period of 30 consecutive days.

38 (3) No delinquency fee may be imposed on a borrower who is
39 180 days or more past due if that fee would result in the sum of
40 the borrower's remaining unpaid principal balance, accrued interest,

1 and delinquency fees exceeding 180 percent of the original
2 principal amount of the borrower's loan.

3 (4) The licensee or any of its wholly owned subsidiaries shall
4 attempt to collect a delinquent payment for a period of at least 30
5 days following the start of the delinquency before selling or
6 assigning that unpaid debt to an independent party for collection.

7 (f) The licensee shall develop and implement policies and
8 procedures designed to respond to questions raised by applicants
9 and borrowers regarding their loans, including those involving
10 finders, and to address customer complaints as soon as reasonably
11 practicable.

12 (g) The following shall apply to a loan made by a licensee
13 pursuant to this section:

14 (1) Prior to disbursement of loan proceeds, the licensee shall
15 either (A) offer a credit education program or seminar to the
16 borrower that has been previously reviewed and approved by the
17 commissioner for use in complying with this section; or (B) invite
18 the borrower to a credit education program or seminar offered by
19 an independent third party that has been previously reviewed and
20 approved by the commissioner for use in complying with this
21 section. The borrower shall not be required to participate in either
22 of these education programs or seminars. A credit education
23 program or seminar offered pursuant to this paragraph shall be
24 provided at no cost to the borrower.

25 (2) The licensee shall report each borrower's payment
26 performance to at least one consumer reporting agency that
27 compiles and maintains files on consumers on a nationwide basis,
28 upon acceptance as a data furnisher by that consumer reporting
29 agency. For purposes of this section, a consumer reporting agency
30 that compiles and maintains files on consumers on a nationwide
31 basis is one that meets the definition in Section 603(p) of the
32 federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any
33 licensee that is accepted as a data furnisher after admittance into
34 the program must report all borrower payment performance since
35 its inception of lending under the program, as soon as practicable
36 after its acceptance into the program, but in no event more than
37 six months after its acceptance into the program.

38 (A) The commissioner may approve a licensee for the program,
39 before that licensee has been accepted as a data furnisher by a
40 consumer reporting agency, if the commissioner has a reasonable

1 expectation, based on information supplied by the licensee, of both
2 of the following:

3 (i) The licensee will be accepted as a data furnisher, once it
4 achieves a lending volume required of data furnishers of its type
5 by a consumer reporting agency.

6 (ii) That lending volume will be achieved within the first six
7 months of the licensee commencing lending.

8 (B) Notwithstanding subparagraph (A), the commissioner shall
9 withdraw approval for pilot program participation from any
10 licensee that fails to become accepted as a data furnisher by a
11 consumer reporting agency within six months of commencing
12 lending under the pilot program.

13 (3) The licensee shall provide each borrower with the name of
14 the consumer reporting agency or agencies to which it will report
15 the borrower's payment history. A licensee that is accepted as a
16 data furnisher after admittance into the program shall notify its
17 borrowers, as soon as practicable following acceptance as a data
18 furnisher, regarding the name of the consumer reporting agency
19 or agencies to which it will report that borrower's payment history.

20 (4) (A) The licensee shall underwrite each loan to determine a
21 borrower's ability and willingness to repay the loan pursuant to
22 the loan terms, and shall not make a loan if it determines, through
23 its underwriting, that the borrower's total monthly debt service
24 payments, at the time of origination, including the loan for which
25 the borrower is being considered, and across all outstanding forms
26 of credit that can be independently verified by the licensee, exceed
27 50 percent of the borrower's gross monthly income.

28 (B) (i) The licensee shall seek information and documentation
29 pertaining to all of a borrower's outstanding debt obligations during
30 the loan application and underwriting process, including loans that
31 are self-reported by the borrower but not available through
32 independent verification. The licensee shall verify that information
33 using a credit report from at least one consumer reporting agency
34 that compiles and maintains files on consumers on a nationwide
35 basis or through other available electronic debt verification services
36 that provide reliable evidence of a borrower's outstanding debt
37 obligations.

38 (ii) Notwithstanding the verification requirement in
39 subparagraph (A), the licensee shall request from the borrower
40 and include all information obtained from the borrower regarding

1 outstanding deferred deposit transactions in the calculation of the
2 borrower's outstanding debt obligations.

3 (iii) The licensee shall not be required to consider, for purposes
4 of debt-to-income ratio evaluation, loans from friends or family.

5 (C) The licensee shall also verify the borrower's income that
6 the licensee relies on to determine the borrower's debt-to-income
7 ratio using information from either of the following:

8 (i) Electronic means or services that provide reliable evidence
9 of the borrower's actual income.

10 (ii) Internal Revenue Service Form W-2, tax returns, payroll
11 receipts, bank statements, or other third-party documents that
12 provide reasonably reliable evidence of the borrower's actual
13 income.

14 (5) The licensee shall notify each borrower, at least two days
15 prior to each payment due date, informing the borrower of the
16 amount due, and the payment due date. Notification may be
17 provided by any means mutually acceptable to the borrower and
18 the licensee. A borrower shall have the right to opt out of this
19 notification at any time, upon electronic or written request to the
20 licensee. The licensee shall notify each borrower of this right prior
21 to disbursing loan proceeds.

22 (h) (1) Notwithstanding Sections 22311 to 22315, inclusive,
23 no person, in connection with, or incidental to, the making of any
24 loan made pursuant to this article, may offer, sell, or require the
25 borrower to contract for "credit insurance" as defined in paragraph
26 (1) of subdivision (a) of Section 22314 or insurance on tangible
27 personal or real property of the type specified in Section 22313.

28 (2) Notwithstanding Sections 22311 to 22315, inclusive, no
29 licensee, finder, or any other person that participates in the
30 origination of a loan under this article shall refer a borrower to any
31 other person for the purchase of "credit insurance" as defined in
32 paragraph (1) of subdivision (a) of Section 22314 or insurance on
33 tangible personal or real property of the type specified in Section
34 22313.

35 (i) (1) No licensee shall require, as a condition of providing the
36 loan, that the borrower waive any right, penalty, remedy, forum,
37 or procedure provided for in any law applicable to the loan,
38 including the right to file and pursue a civil action or file a
39 complaint with or otherwise communicate with the commissioner
40 or any court or other public entity, or that the borrower agree to

1 resolve disputes in a jurisdiction outside of California or to the
2 application of laws other than those of California, as provided by
3 law. Any waiver by a borrower must be knowing, voluntary, and
4 in writing, and expressly not made a condition of doing business
5 with the licensee. Any waiver that is required as a condition of
6 doing business with the licensee shall be presumed involuntary,
7 unconscionable, against public policy, and unenforceable. The
8 licensee has the burden of proving that a waiver of any rights,
9 penalties, forums, or procedures was knowing, voluntary, and not
10 made a condition of the contract with the borrower.

11 (2) No licensee shall refuse to do business with or discriminate
12 against a borrower or applicant on the basis that the borrower or
13 applicant refuses to waive any right, penalty, remedy, forum, or
14 procedure, including the right to file and pursue a civil action or
15 complaint with, or otherwise notify, the commissioner or any court
16 or other public entity. The exercise of a person’s right to refuse to
17 waive any right, penalty, remedy, forum, or procedure, including
18 a rejection of a contract requiring a waiver, shall not affect any
19 otherwise legal terms of a contract or an agreement.

20 (3) This subdivision shall not apply to any agreement to waive
21 any right, penalty, remedy, forum, or procedure, including any
22 agreement to arbitrate a claim or dispute, after a claim or dispute
23 has arisen. Nothing in this subdivision shall affect the enforceability
24 or validity of any other provision of the contract.

25 (j) This section shall not apply to any loan of a bona fide
26 principal amount of two thousand five hundred dollars (\$2,500)
27 or more as determined in accordance with Section 22251. For
28 purposes of this subdivision, “bona fide principal amount” shall
29 be determined in accordance with Section 22251.

30 SEC. 2. Section 22372 of the Financial Code is amended to
31 read:

32 22372. (a) A finder may perform one or more of the following
33 services for a licensee at the finder’s physical location for business:

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

39 (2) Providing written factual information about loan terms,
40 conditions, or qualification requirements to a prospective borrower

1 that has been either prepared by the licensee or reviewed and
2 approved in writing by the licensee. A finder may discuss that
3 information with a prospective borrower in general terms, but may
4 not provide counseling or advice to a prospective borrower.

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

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

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

15 (6) Contacting the licensee to determine the status of a loan
16 application.

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

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

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

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

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 identification.

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

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

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

28 (i) The name of the finder.

29 (ii) The total payment amount received.

30 (iii) The date of payment.

31 (iv) The corresponding loan account identification upon which
32 the payment is being applied.

33 (v) The loan balance prior to and following application of the
34 payment.

35 (vi) The amount of the payment that was applied to principal,
36 interest, and fees.

37 (vii) The type of payment, such as cash, automated clearing
38 house (ACH) transfer, check, money order, or debit card.

39 (viii) The following statement, prominently displayed in a type
40 size equal to or greater than the type size used to display the other

1 items on the receipt: “If you have any questions about your loan,
2 now or in the future, you should direct those questions to [name
3 of licensee] by [insert at least two different ways in which a
4 borrower may contact the licensee].”

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~~ *an*
12 examination *of the licensee* by the commissioner, whichever is
13 later. *The commissioner shall determine when an examination is*
14 *complete.*

15 (3) Providing any notice or disclosure required to be provided
16 to the borrower by the ~~licensee~~. *licensee, other than the notice*
17 *required to be provided by the licensee to the borrower pursuant*
18 *to subdivision (d) of Section 22373. A licensee that uses a finder*
19 *to provide notices or disclosures to borrowers shall maintain a*
20 *record of which notices and disclosures each finder provides to*
21 *borrowers on its behalf, for the purpose of facilitating the*
22 *commissioner’s examination of the licensee.*

23 (c) A finder shall not engage in either of the following activities:

24 (1) Providing counseling or advice to a borrower or prospective
25 borrower.

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

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

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

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

36 (3) Offering information pertaining to a single prospective
37 borrower to more than one licensee, except that, if a licensee has
38 declined to offer a loan to a prospective borrower and has so
39 notified that prospective borrower in writing, the person may then

1 offer information pertaining to a single prospective borrower to
2 another licensee with which it has a finder’s agreement.

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

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

9 SEC. 3. Section 22373 of the Financial Code is amended to
10 read:

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

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

30 (b) If the loan applicant has questions about the loan that the
31 finder is not permitted to answer, the finder shall make a good
32 faith effort to assist the applicant in making direct contact with the
33 lender before the loan is consummated. This good faith effort shall,
34 at a minimum, consist of assisting the applicant in communicating
35 with the licensee as soon as reasonably practicable, which shall at
36 a minimum include a “two-way communication.” For purposes of
37 this section, “two-way communication” includes telephone,
38 electronic mail, or another form of communication that allows the
39 applicant to communicate with the licensee.

1 (c) Using the policies developed pursuant to subdivision (f) of
2 Section 22370, the licensee shall ensure that a loan is not
3 consummated until the licensee has completed a “two-way
4 communication” with the applicant. Sending a voicemail or
5 electronic message to the applicant, without a prior or subsequent
6 response from the applicant, shall not constitute a “two-way
7 communication.”

8 (d) If the loan is consummated, the licensee shall provide the
9 borrower a written copy of the disclosure notice within two weeks
10 following the date of the loan consummation. A licensee may
11 include the disclosure within its loan contract, or may provide it
12 as a separate document to the borrower, via any means acceptable
13 to the borrower.

14 SEC. 4. Section 22374 of the Financial Code is amended to
15 read:

16 22374. (a) A finder may be compensated by the licensee
17 pursuant to the written agreement between the licensee and the
18 finder, as described in Section 22376. Compensation may be paid
19 in accordance with a compensation schedule that is mutually agreed
20 to by the licensee and the finder.

21 (b) Notwithstanding subdivision (a), the compensation of a
22 finder by a licensee shall be subject to all of the following
23 requirements:

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

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

28 (3) The total compensation paid by a licensee to a finder over
29 the life of a loan shall not exceed the sum of the origination fee
30 and interest charges paid by the borrower in connection with that
31 loan.

32 (4) Subject to the limitations set forth in paragraphs (1) to (3),
33 inclusive, the total compensation paid by a licensee to a finder for
34 the services set forth in subdivision (a) of Section 22372 shall not
35 exceed sixty-five dollars (\$65) per loan, whether paid at the time
36 of consummation, over installments, or in a manner otherwise
37 agreed upon by the licensee and the finder, plus two dollars (\$2)
38 per payment received by the finder on behalf of the licensee for
39 the duration of the loan, when the finder receives borrower loan

1 payments on the licensee’s behalf in accordance with subdivision
2 (b) of Section 22372.

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

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

11 SEC. 5. Section 22375 of the Financial Code is amended to
12 read:

13 22375. A licensee that utilizes the service of a finder shall do
14 all of the following:

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

18 (1) The name, business address, and licensing details of the
19 finder and all locations at which the finder will perform services
20 under this article.

21 (2) The name and contact information for an employee of the
22 finder who is knowledgeable about, and has the authority to
23 execute, the contract governing the business relationship between
24 the finder and the licensee.

25 (3) The name and contact information for one or more
26 employees of the finder who are responsible for that finder’s
27 finding activities on behalf of the licensee.

28 (4) A list of the activities the finder shall perform on behalf of
29 the licensee.

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

31 (b) Pay an annual finder registration fee to the commissioner
32 in an amount to be established by the commissioner by regulation
33 for each finder utilized by the licensee.

34 (c) Submit an annual report to the commissioner including, for
35 each finder, the information listed in paragraph (12) and
36 subparagraph (A) of paragraph (13) of subdivision (d) of Section
37 22380, and any other information pertaining to each finder and
38 the licensee’s relationship and business arrangements with each
39 finder as the commissioner may by regulation require. The
40 information disclosed to the commissioner for the report described

1 in this subdivision is exempted from any requirement of public
2 disclosure by paragraph (2) of subdivision (d) of Section 6254 of
3 the Government Code.

4 SEC. 6. Section 22377 of the Financial Code is amended to
5 read:

6 22377. (a) The commissioner may examine the operations of
7 each licensee and each finder to ensure that the activities of the
8 licensee and the finder are in compliance with this article. The
9 costs of the commissioner's examination of each finder shall be
10 attributed to the commissioner's examination of the licensee. Any
11 violation of this article by a finder or a finder's employee shall be
12 attributed to the finance lender with whom it has entered into an
13 agreement for purposes of determining the licensee's compliance
14 with this division.

15 (b) Upon a determination that a finder has acted in violation of
16 this article, or any implementing regulation, or upon a
17 determination that it would be warranted by the data reported to
18 the commissioner pursuant to subdivision (c) of Section 22375 for
19 any finder, the commissioner may disqualify a finder from
20 performing services under this article, bar a finder from performing
21 services at one or more specific locations of that finder, terminate
22 a written agreement between a finder and a licensee, and, if the
23 commissioner deems that action in the public interest, prohibit the
24 use of that finder by all licensees accepted to participate in the
25 pilot program.

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

30 SEC. 7. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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