

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 362 (Grayson)
Version: March 17, 2025
Hearing Date: April 22, 2025
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Commercial financing: disclosures

DIGEST

This bill strengthens requirements related to pricing disclosures for commercial financing transactions and clarifies the Department of Financial Protection and Innovation's (DFPI) enforcement authority for violations of those requirements.

EXECUTIVE SUMMARY

In 2018, the Legislature enacted SB 1235 (Glazer, Ch. 1011, Stats. 2018), which established required disclosures for commercial financing offers of under \$500,000, as specified. The bill was intended to provide small business owners with information about the actual costs of non-loan financing products not already covered by the California Financing Law (CFL). The DFPI adopted regulations implementing SB 1235 at the end of 2022.

This bill is intended to strengthen California's commercial financing disclosure regime in three ways. First, the bill specifies that the disclosure requirements apply to entities covered by the California Consumer Financial Protection Law (CCFPL) when they offer the types of non-loan financing products addressed in SB 1235. Second, the bill establishes a DFPI review process for finance providers who wish to use a specific method of calculating one of their disclosures; the DFPI procedure is intended to ensure that the disclosures are reasonably accurate and not misleading. Third, this bill limits when a finance provider can use certain terms outside of their normal meaning, to ensure that the recipients of non-loan financing products are not misled.

This bill is sponsored by CAMEO Network, the Responsible Business Lending Coalition, and Small Business Majority, and is supported by 16 for-profit financing companies, nonprofit advocates, and small business owners. The Committee has not

received timely opposition to this bill. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 7-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the CFL, which regulates consumer and commercial loans with the goals of ensuring an adequate supply of credit to borrowers in the state and protecting borrowers against unfair lending practices. (Fin. Code, div. 9, §§ 22000 et seq.)
- 2) Establishes, within Division 9.5 of the Financial Code (Division 9.5), disclosure requirements related to commercial financing. (Fin. Code, div. 9.5, §§ 22800 et seq.)
- 3) Exempts from Division 9.5's disclosure requirements:
 - a) A provider that is a depository institution.
 - b) A provider that is a lender regulated under the federal Farm Credit Act.
 - c) A commercial financing transaction secured by real property.
 - d) A commercial financing transaction in which the recipient is a dealer, as defined, or a vehicle rental company, and other specified requirements are met.
 - e) Any person who makes no more than one commercial financing transaction in California in a 12-month period or any person who makes 5 or fewer commercial financing transactions in a 12-month period that are incidental to the business of the person relying on the exemption. (Fin. Code, § 22801.)
- 4) Defines the following relevant terms within Division 9.5:
 - a) "Commercial financing" means an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan, or lease financing intended by the recipient for use primarily for other than personal, family, or household purposes; for purposes of determining whether financing is covered by 2), the provider may rely on any written statement of intended purposes signed by the recipient, as specified.
 - b) "Commercial loan" means a loan of a principal amount of \$5,000 or more, or any loan under an open-ended credit plan, the proceeds of which are intended by the recipient for use primarily other than personal, family, or household purposes.
 - c) "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.
 - d) "Provider" means a person who extends a specific offer of commercial financing to a recipient, and includes a nondepository institution which enters into a written agreement with a depository to arrange for the extension

- of commercial financing by the depository institution to a recipient via an online lending platform administered by the nondepository institution.
- e) "Recipient" means a person who is presented a specific commercial financing offer by a provider that is equal to or less than \$500,000. (Fin. Code, § 22800.)
- 5) Requires a covered provider to disclose all of the following information to a recipient at the time of extending a specific commercial financing offer to that recipient, and to obtain the recipient's signature on the disclosure before consummating the transaction:
- a) The total amount of funds provided.
 - b) The total dollar cost of the financing.
 - c) The term or estimated term.
 - d) The method, frequency, and amount of payments.
 - e) A description of prepayment policies.
 - f) The total cost of the financing expressed as an annualized rate. (Fin. Code, § 22802.)
- 6) Permits 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 to provide the following disclosures as an example of a transaction that could occur under the general agreement for a given amount of accounts receivables, in lieu of the disclosures in 4):
- a) An amount financed.
 - b) The total dollar cost.
 - c) The term or estimated term.
 - d) The method, frequency, and amount of payments.
 - e) A description of prepayment policies.
 - f) The total cost of the financing expressed as an annualized rate. (Fin. Code, § 22803.)
- 7) Requires the Commissioner of the DFPI to adopt regulations governing the disclosures in 5) and 6), including regulations concerning the annualized rate disclosure. (Fin. Code, § 22804.)
- 8) Provides that any provider licensed under the CFL as of the date the DFPI adopts final regulations pursuant to 5) shall be subject to examination and enforcement by the DFPI under the CFL for any violation of the disclosure requirements set forth above or related rules or orders. (Fin. Code, § 22805.)
- 9) Provides that, if an actual annual percentage rate (APR) charged by a provider differs from the estimated APR disclosed by the provider under 5) or 6), no liability shall attach if the estimated APR was disclosed in conformity with any regulation, order, or written interpretive opinion of the Commissioner of the DFPI or the Attorney General. (Fin. Code, § 22806.)

This bill:

- 1) Establishes a process by which the DFPI can approve a provider's use of the underwriting method for calculating estimated APR when making the required commercial financing disclosures under Division 9.5, as follows:
 - a) The provider shall, on an annual basis, report data to the DFPI regarding estimated annual percentage rates disclosed to recipients and actual retrospective annual percentage rates of completed transactions.
 - b) The report contains information as the DFPI, by rule, prescribes as necessary or appropriate for the purpose of making a determination of whether the deviation between estimated APRs and actual retrospective APRs of completed transactions was reasonable.
- 2) Requires the DFPI to establish the method of reporting required under 1) and may, upon a finding that the use of projected sales volume by the provider has resulted in an unacceptable deviation between the estimated and actual APR, require the provider to use a specified alternative method; the DFPI may consider unusual and extraordinary circumstances impacting the provider's deviation between estimated and actual APR in determining whether the provider's use of projected sales volume has resulted in an unacceptable deviation.
- 3) Provides that a provider shall not, in connection with its Division 9.5 disclosures:
 - a) Use the term "interest" to describe a percentage rate unless that rate is an annual percentage rate calculated pursuant to Section 940 of Title 10 of the California Code of Regulations.
 - b) Use the term "rate" to describe a metric of financing cost presented or disclosed during an application process for a commercial financing transaction unless that rate is an APR calculated pursuant to Section 940 of the California Code of Regulations.
- 4) Requires a provider, after extending a specific offer covered by Division 9.5 to a potential recipient, whenever a provider states a charge, pricing metric, or financing amount to the potential recipient during an application process for commercial financing, to also state the APR of that commercial financing offer by using the term "annual percentage rate" or "APR."
- 5) Modifies the enforcement of the Division 9.5 disclosure requirements to provide that:
 - a) A violation of the commercial financing disclosure requirements by a person licensed under the CFL shall be deemed a violation of the CFL if the violation relates to a commercial financing transaction that is subject to the CFL.
 - b) A violation of the commercial financing disclosure requirements shall be deemed an unfair, deceptive, or abusive act or practice under the CCFPL if

the violation relates to a commercial financing transaction that is not subject to the CFL.

COMMENTS

1. Author's comment

According to the author:

Running a small business is hard enough without needing to wade through the dizzying array of credit options that can either lift a business up or weigh it down into failure. I am proud that California led the way in 2018, setting us on the path to providing more complete and helpful pricing disclosures for commercial financing. These requirements equip small businesses with the information they need to compare financing offers and make a decision that best fits their needs. But going first means that you cannot learn from others, and as other states have joined us in these efforts, I see opportunities to adopt good policies that can make our law even better. SB 362 will strengthen our price disclosure law by improving the accountability of financing providers and ensuring that small businesses receive clear disclosures throughout the marketing process.

2. Background on Division 9.5 and the annualized rate disclosure requirement

The legal regime regulating loans and other financing products is complex. Banks, trust companies, savings and loan associations, and other traditional banking entities are regulated under industry-specific federal and state laws.¹ Consumer and commercial loans and lines of credit offered by other business entities are regulated by the DFPI and must obtain a license under the CFL.² And the CCFPL regulates non-loan financial products offered to consumers – financial products such as sales-based financing, merchant advances, and factoring – which do not fit within the definition of a “loan” but serve the same purpose.³

Current law does not, however, impose the same degree of regulation of, or oversight for, transactions relating to non-loan financing products offered to businesses. In 2018, to help close this gap, the Legislature enacted SB 1235 (Glazer, Ch. 1011, Stats. 2018), which established Division 9.5's disclosure requirements for specified entities extending commercial financing offers of less than \$500,000. SB 1235 deliberately placed its disclosure requirements outside of the CFL – while applying the requirements to CFL licensees offering covered financial products – to ensure that it covered all commercial

¹ See Fin. Code, § 22050.

² Fin. Code, div. 9, §§ 22000 et seq.

³ *Id.*, div. 24, §§ 90000 et seq.

lenders, except those already covered by other relevant disclosure laws.⁴ In 2023, the Legislature enacted SB 33 (Glazer, Ch. 376, Stats. 2023), which removed the sunset clause on one of Division 9.5's disclosures required for non-loan commercial finance providers: the requirement that they disclose the total cost of the financing as expressed in an annualized rate, in a format implemented by the DFPI through regulation.

Division 9.5's annualized rate disclosure requirement – which requires the financing provider to disclose the “total cost of the financing as expressed as an annualized rate”⁵ – has proven controversial. SB 1235 gave DFPI the discretion to determine the best metric for expressing the annualized rate, and after a four-year rulemaking process, the DFPI landed on the APR method.⁶ The DFPI's regulations also establish how providers of sales-based financing can calculate their estimated APR under two methods: the historical method and the underwriting method.⁷ Providers using the underwriting method must additionally conduct regular audits to determine whether its estimated and actual APR rates were sufficiently similar.⁸ In the event that the difference between the estimated and actual APR was too great, the provider is prohibited from using the underwriting method for a set period of time.⁹

When this Committee heard SB 33 in 2023, the only opposition to the bill related to the continued APR disclosure requirement; opponents argued that it was too difficult to estimate an APR with meaningful certainty, meaning financiers would be unfairly charged with incorrect disclosures. As a compromise, the author added a safe harbor for cases when the actual APR varied from an estimated APR provided by a financier, if the disclosure was made in conformity with any applicable regulation, order, or written interpretive opinion issued by the DFPI or the Attorney General.¹⁰

3. This bill adds additional oversight of, and protections for, Division 9.5's disclosure requirements

This bill is intended to strengthen California's protections for borrowers in three ways.

First, this bill is intended to further harmonize the obligations imposed on various finance providers. Division 9.5 already applies to CFL licensees; this bill extends Division 9.5's requirements to finance providers covered by the CCFPL but not the CFL, by deeming a violation of Division 9.5 an unfair, deceptive, or abusive act or practice under the CCFPL if the transaction is not also subject to the CFL. This change allows

⁴ Sen. Comm. on Banking & Financial Institutions on Sen. Bill No. 1235 (2017-2018 Reg. Sess.) Aug. 31, 2018, p. 7; Fin. Code, § 228801.

⁵ Fin. Code, §§ 22802, 22803.

⁶ See Cal. Code Regs., tit. 10, §§ 930, 931, 940.

⁷ *Id.*, §§ 930-931.

⁸ *Id.*, § 931.

⁹ *Ibid.*

¹⁰ See Fin. Code, § 22806.

the DFPI to use its CCFPL enforcement authority against unlicensed finance providers that fail to comply with their disclosure obligations.

Second, the bill adds additional oversight to the use of the underwriting method to comply with Division 9.5's annualized rate disclosure. Under this bill, providers using the underwriting method to calculate APR will be required to annually report the DFPI information about their estimated versus actual APR rates. If the DFPI determines that there is too great a divergence between the provider's estimated and actual rates, the DFPI may require the provider to use the historical method of calculating APR instead. This is intended to ensure that providers are not systematically misstating the actual cost of financing provided to small business owners.

Finally, this bill adds to Division 9.5 restrictions on the use of the terms "interest," "rate," and "APR" except when used to describe the APR calculated in compliance with applicable regulations. These limitations are intended to prevent finance providers from using commonly understood terms in misleading ways, particularly during negotiations after the Division 9.5 disclosures have already been made. According to the Senate Banking and Financial Institutions Committee's analysis of this bill, which is incorporated herein by reference, these provisions are modeled after similar provisions in the federal Truth in Lending Act.

Although no opponent has raised the issue, it is worth noting that the bill's restrictions on the use of certain terms are restrictions on providers' speech, which could theoretically give rise to a First Amendment challenge. It appears that such a challenge would be unlikely to succeed. Commercial speech is entitled to fewer protections than noncommercial speech.¹¹ The state is "free to prevent the dissemination of commercial speech that is false, deceptive, or misleading."¹² Given that the express goal of this bill is to prevent the misleading use of commonly understood terms, it appears likely that the state would meet its burden of showing that these provisions fall within the state's power to regulate deceptive business communications.

4. Arguments in support

According to a coalition of the bill's supporters and sponsor CAMEO Network:

The unanimous passage of SB 33 in 2023 made permanent California's transparent price disclosure framework for small business financing. However, that disclosure framework remains hobbled, including:

- The flexibility that current statute allows providers in calculating an estimated APR for certain forms of financing could result in systemic underestimating of APRs without strong oversight;

¹¹ *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio* (1985) 471 U.S. 626, 637.

¹² *Id.* at p. 638.

- One-time disclosure requirements could result in unscrupulous providers distracting or deceiving potential borrowers by misrepresenting the cost of financing; and
- The current statute lacks clarity on how its provisions would be enforced relative to providers that are not required to be licensed under an existing program administered by the Department of Financial Protection and Innovation (DFPI).

SB 362 addresses the gaps in California's small business financing disclosure framework. The bill provides a reporting mechanism that allows DFPI to evaluate the actual vs. estimated APRs disclosed by a provider and prevent rigging of estimates. The bill requires that providers disclose the estimated APR at any time during the offering process where details of the financing offer are mentioned. The bill also makes clear DFPI's enforcement authority related to licensed activity and financing activities that are permitted to take place outside of the licensing framework. These solutions will create a more coherent disclosure framework and result in small businesses receiving better information as they shop around for the best financing offers that fit their needs.

SUPPORT

CAMEO Network (co-sponsor)
Responsible Business Lending Coalition (co-sponsor)
Small Business Majority (co-sponsor)
Accessity
Asociacion de Emprendedor@s
California Coalition for Community Investment
California Southern SBDC
Consumer Federation of California
El Pajaro Community Development Corporation
HIAS Economic Advancement Fund
Housing and Economic Rights Advocates
ICA Fund
JEDI
MicroCare Community Development Solutions
Microenterprise Collaborative of Inland Southern California
Public Council
San Joaquin Community Foundation
Toss It Up
Uptima Entrepreneur Cooperative

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation:

SB 825 (Limón, 2025) clarifies that the CCFPL's enforcement exemption for persons or employees acting under the authority of certain licenses, certificates, or charters issued by the DFPI does not prevent the Commissioner of the DFPI from using the CCFPL's authority to enforce the CCFPL's prohibition on deceptive or abusive acts or practices. SB 825 is pending before this Committee and is set to be heard on the same date as this bill.

SB 728 (Padilla, 2025) expands the purposes of the CCFPL to include protecting small businesses from abusive financial practices, as specified, and implements a registration requirement for businesses providing non-loan commercial financing products, beginning January 1, 2027. SB 728 is pending before this Committee and is set to be heard on the same date as this bill.

Prior legislation:

SB 1482 (Glazer, 2024) was substantially similar to SB 869 (Glazer, 2023) when it was passed by this Committee, but it was eventually amended by the author so that it would have established a registration program for commercial financing providers; the Assembly Appropriations Committee then amended out most of the bill's effective provisions. SB 1482 died on the Assembly Floor.

SB 869 (Glazer, 2023) would have expanded the CFL to include non-loan commercial financing products, and included required disclosures substantially similar to this bill's requirements for how to estimate APR for sales-based financing and how a provider must communicate with a potential recipient when discussing pricing information. SB 869 died in the Senate Appropriations Committee.

SB 33 (Glazer, Ch. 376, Stats. 2023) removed the sunset provision put in place by SB 1235 (Glazer, Ch. 1011, Stats. 2018) on a specific disclosure term required for entities offering commercial financing products not covered by the CFL.

SB 1235 (Glazer, Ch. 1011, Stats. 2018) established disclosure requirements for specified entities extending commercial financing offers of less than \$500,000, including entities offering commercial financing in forms not covered by the CFL.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 7, Noes 0)
