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SB-1235 Commercial financing: disclosures. (2017-2018)

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Senate Bill No. 1235

CHAPTER 1011

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

[Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1235, Glazer. Commercial financing: disclosures.

(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 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, 2024, additionally require a provider 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 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 a specified number of commercial financing transactions in California during a 12-month period and meets other requirements.

This bill would require a provider who is 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.

(2) 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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.

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

DIVISION 9.5. Commercial Financing Disclosures

22800. For purposes of this division:

(a) "Account" means a right to a payment of a monetary obligation.

(b) "Accounts receivable purchase transaction" means a transaction as part of an agreement requiring a recipient to forward or otherwise sell to the provider all or a portion of accounts, payment intangibles, or cash receipts that are owed to the recipient or are collected by the recipient during a specified period or in a specified amount.

(c) "Asset-based lending transaction" means a transaction in which advances are made from time to time contingent on a recipient forwarding payments received from one or more third parties for goods the recipient has supplied or services the recipient has rendered to that third party or parties.

(d) (1) "Commercial financing" means an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan, or lease financing transaction intended by the recipient for use primarily for other than personal, family, or household purposes.

(2) For purposes of determining whether financing is commercial financing within the meaning of this subdivision, the provider may rely on any written statement of intended purposes signed by the recipient. The statement may be a separate statement signed by the recipient or may be contained in a loan application or other document signed by the recipient. The provider shall not be required to ascertain that the proceeds of the commercial financing are used in accordance with the statement of intended purposes.

(e) "Commercial loan" means a loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit plan, the proceeds of which are intended by the recipient for use primarily for other than personal, family, or household purposes.

(f) "Commercial open-end credit plan" means a provider's plan for making open-end loans pursuant to a loan agreement that sets forth the terms and conditions governing the use of the open-end credit program, and provides that:

(1) The recipient may use the open-end credit program to obtain money, goods, labor, or services or credit, and the provider makes open-end loans to the recipient for the purpose of paying money to, or at the direction of, the recipient or paying obligations that the recipient creates through use of the open-end credit program.

(2) The amount of each advance and the charges and other permitted costs are debited to an account.

(3) The charges are computed from time to time on the unpaid balances of the recipient's account, excluding from the computation any unpaid charges other than permitted fees, costs, and expenses.

(4) The recipient has the privilege of paying the account in full at any time.

(g) "Commissioner" means the Commissioner of Business Oversight.

(h) "Depository institution" means any of the following:

(1) A bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United

States that is authorized to transact business in this state.

(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized 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 includes a purchase option that creates a security interest in the goods leased, as defined in paragraph (35) of subdivision (b) of Section 1201 and Section 1203 of the Commercial Code.

(2) The definition of lease financing in this Division shall not be construed to repeal or otherwise amend existing law related to the definition of leases and security interests under the Commercial Code.

(k) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(l) "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.

(m) "Provider" means a person who extends a specific offer of commercial financing to a recipient. "Provider" also includes a nondepository institution, which enters into a written agreement with a depository institution 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. The fact that a provider extends a specific offer of commercial financing or lending on behalf of a depository institution shall not be construed to mean that the provider engaged in lending or originated that loan or financing.

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

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 of at least fifty thousand dollars (\$50,000), including any commercial loan made pursuant to such a commercial financing transaction.

(e) Any person who makes no more than one commercial financing transaction in California in a 12-month period or any person who makes five or fewer commercial financing transactions in California in a 12-month period that are incidental to the business of the person relying upon the exemption.

22802. (a) A provider subject to this division 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 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 and the types of fees and charges to be included in that calculation.

(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 licensed under the California Financing Law (Division 9 (commencing with Section 22000)) as of the date that the final regulations adopted by the commissioner pursuant to Section 22804 become effective and from that point thereafter, shall 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. 3. 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.