

Date of Hearing: July 7, 2025

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Avelino Valencia, Chair

SB 362 (Grayson) – As Amended May 23, 2025

SENATE VOTE: 38-0

SUBJECT: Commercial financing: disclosures

SUMMARY: Strengthens requirements related to pricing disclosures for commercial financing transactions and clarifies the enforcement authority provided to the Department of Financial Protection and Innovation (DFPI) for violations of the requirements.

EXISTING LAW:

California

1. Commercial Financing Disclosure (CFD) statutes are found in Division 9.5 of the Financial Code, Sections 22800-22806.
2. Defines “provider” to mean a person who extends a specific offer of commercial financing to a recipient. The definition further specifies “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. Fin. Code Section 22800 (m)
3. CFD excludes 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 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. (Floor plan lenders)
 - d. 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. Fin. Code Section 22801

4. Defines “recipient” to mean 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). Fin Code Section 22800 (n)
5. Requires a covered provider to receive written affirmation from a recipient at the outset of a commercial financing offer confirming acknowledgement of disclosure of the following applicable information:
 - 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 Section 22802
6. 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:
 - 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 Section 22803
7. Requires the Department of Financial Protections and Innovation (DFPI) to adopt regulations governing the disclosures listed in (1)-(5) in Section 22802 and (a)-(e) in Section 22803, inclusive, including:
 - a. Definitions, contents, or methods of calculations for each of the disclosure items in each applicable paragraph; and
 - b. Requirements concerning the time, manner, and format of the applicable disclosures described. Fin. Code Section 22804 (a)
8. Requires the DFPI to adopt regulations concerning the annualized rate disclosure described in paragraph 6 of Section 22802 and subdivision (f) of Section 22803, which shall include:

- a. 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.
 - b. When providers shall be permitted to disclose an estimated annualized rate, and how that 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.
 - c. Requirements concerning the time, manner, and format of the disclosure. Fin. Code Section 22804 (b)
9. The California Consumer Financial Protection Law (CCFPL) makes unfair, deceptive, or abusive acts or practices by a covered person with respect to consumer financial products unlawful. Fin. Code Section 90003(a)(1)
10. California Code of Regulations (C.C.R. Title 10, Section 1061 defines UDAAP authority of the DFPI in commercial financing.)
11. Defines “Benchmark rate” to mean a rate index (such as, but not limited to, the Secured Overnight Financing Rate (SOFR), Prime Rate, Wall Street Journal (WSJ) Prime Rate, or 1-, 3-, or 5-year Treasury Constant Maturity), based upon general market conditions, that is commonly used to calculate the interest rate in adjustable-rate transactions in the credit industry. C.C.R. Tit. 10 Section 900 (a)(7)
12. Defines “Specific commercial financing offer” to mean a written communication to a recipient, based upon information from, or about, the recipient, of (i) a periodic payment amount, irregular payment amount, or financing amount, and (ii) any rate, price, or cost of financing (including, without limitation, any total repayment amount), in connection with a commercial financing. Information "about the recipient" includes information about the recipient that informs the provider's quote to the recipient, such as the recipient's financial or credit information, but not the recipient's name, address, or general interest in financing. C.C.R. Tit. 10 Section 900(a)(29)
13. Defines “At the time of extending a specific commercial financing offer” under section 22802 of the code to mean:
 - a. Any time a specific commercial financing offer is quoted to a recipient. However, if a provider simultaneously presents multiple, distinct specific commercial financing offers to the recipient and allows the recipient to select from among those options, then "at time of extending a specific commercial financing offer" occurs at the time that the recipient selects an option.
 - b. Any time when the terms of a consummated commercial financing contract are amended, supplemented, or changed, prior to the recipient agreeing to the changes, if the resulting changes to the contract would result in an increase to the annual percentage rate, regardless of whether those terms were previously disclosed to the recipient. This subparagraph does not apply to changes made to resolve a recipient's default on a financing contract.

- c. Notwithstanding subdivisions (a)(5)(A) and (a)(5)(B), any time a specific commercial financing offer is quoted to a recipient in connection with each draw on an open-end credit plan if:
1. draws occur at the time that a recipient purchases products or services from a retailer or supplier;
 2. the rate or price varies based upon the retailer or supplier the recipient selects, or the products or services the recipient purchases; and
 3. the provider chooses to provide disclosures under section 910 in connection with each draw pursuant to this subparagraph rather than a disclosure under section 911. C.C.R. Tit. 10 Section 900(a)(5)

New York:

1. Commercial Financing statutes are found in Financial Services Law (FIS) Chapter 18-A of the Consolidated Laws, Article 8, Sections 801-812.
2. The New York Law was enacted in 2022 following California's 2018 SB 1235 (Glazer) bill echoing the same protections as California's existing law plus more small business protection.
3. After two years, small business advocates have identified loopholes in the law that can be addressed to better satisfy the original intent of SB 1235.
4. Existing law: "Additional information. Nothing in this article shall prevent a provider from providing or disclosing additional information on a commercial financing being offered to a recipient, provided however, that such additional information shall not be disclosed as part of the disclosure required by this article. If other metrics of financing cost are disclosed or used in the application process of a commercial financing, these metrics shall not be presented as a "rate" if they are not the annual interest rate or the annual percentage rate. The term "interest", when used to describe a percentage rate, shall only be used to describe annualized percentage rates, such as the annual interest rate. **When a provider states a rate of finance charge or a financing amount to a recipient during an application process for commercial financing, the provider shall also state the rate as an "annual percentage rate", using that term or the abbreviation "APR".** FIS Section 810. (Emphasis added.)

Federal Truth in Lending Act (TILA)

1. Requires that in responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, shall state rates only in terms of the annual percentage rate, except that in the case of an open end credit plan, the periodic rate also may be stated and, in the case of an other than open end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated. 15 U.S.C. Section 1665a.
2. If an advertisement states a rate of finance charge, it shall state the rate as an "annual percentage rate," using that term. Regulation Z Section 1026.24(c)

3. Regulation Z sets forth calculation requirements for annual percentage rate (APR) including accuracy, mortgage loans, computational tools, single add-on rate transactions, and transaction involving a range of balances. Regulation Z Section 1026.22
4. Identifies “triggering terms” for which additional terms of advertising must be included. Regulation Z Section 1026.24(d).

THIS BILL

1. Prohibits a commercial financing provider from the following:
 - a. Using the term “interest” to describe a percentage rate in a manner that is deceptive that will mislead or is likely to materially the recipient.
 - b. Using the term “rate” to describe a metric of financing cost unless that rate is an annual percentage rate calculated in accordance with specified existing laws.
2. Requires a commercial financing provider, after extending a specific offer to a potential recipient and whenever stating a charge, pricing metric, or financing amount to the potential recipient during an application process, to state the “annual percentage rate” by using that term or the acronym “APR.”
3. Provides that a violation of the commercial financing disclosure requirements is 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 California Financing Law.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

COMMENTS:

It is well documented that underserved and marginalized populations have difficulties accessing capital for their personal credit-- this extends to their business endeavors. 6 out of 10 Black businesses have difficulty obtaining financial resources for their business prior to the pandemic. For Black and Latino business owners this includes start-up funding, growth funding, and low, sustainable interest rates. Small businesses play a vital role in stabilizing their communities by providing jobs, providing basic services, and restoring commercial life to underestimated communities.

In 2018, SB 1235 (Glazer, Chapter 1011, Statutes of 2018) established a first-in-the-nation disclosure framework that applies to a variety of financing products offered to small business borrowers. Modeled after the disclosures required by the federal Truth in Lending Act, SB 1235 requires financing providers to disclose all interest, fees, and other finance charges associated with loans and other forms of financing extended to small businesses. The law also requires that finance charges be disclosed as an annualized rate with the goal of allowing customers to be able to compare offers with comparable metrics to be able to shop for the best deal.

While generally successful, some remaining hanging threads are being addressed in this bill to achieve the transparency originally sought for small businesses to have more informed market choice, especially as non-traditional lending starts to take up more market share.

1. The Problem

Interest is confusing. Finance terms are confusing. “APR”, “simple interest”, “compound interest”, “origination fee”, “factor rate”, “fixed or variable”, and “annualized rate”. These terms and concepts are understandably unclear for many people whether they are buying a car or taking out a quarter million dollar business loan. However, traditional financing concepts are generally accepted. For example, the sooner you pay off a credit card, the less interest you’ll pay, or the higher the APR (annual percentage rate), the more the loan will cost. The problem is that this concept is not true for some of the newer models of non-finance lending. In a study conducted by the Federal Reserve, focus group participants were asked about repayment on a **fixed** payback amount based on future sales. Participants were asked what the effect of their interest rate would be if they were to have higher-than-expected sales and were able to pay the amount back sooner than planned.

- “I would definitely plan to [pay] the loan back much sooner and have a lesser repayment amount.”
- “The stronger [your] sales the faster you could pay off the loan which would in effect lower the interest rate.”¹

These responses are illustrative of the confusion around framing repayment in a different way to those who are accustomed to traditional financing products. Not only does paying the loan back faster not decrease the total amount of repayment on a fixed amount loan, repaying it faster increases the effective interest rate.

This table compares the terms of repayment for a fixed amount loan based on variable payment amounts. When compared in this manner, side-by-side, apples to apples, it is clear that repaying the loan faster has both a higher payment amount and estimated APR. If provided this standardized information, despite the total repayment amount being fixed, a reasonable person may make a different choice than they would without it.

Details	Advance amount: \$50,000 Repayment amount: \$70,000 Holdback rate: 10% of monthly sales
Monthly sales of \$100,000	Payment amount: \$333 daily Term: 7 months Estimated APR: 125% Repayment Amount: \$70,000
Monthly sales of \$70,000	Payment amount: \$233 daily Term: 10 months Estimated APR: 87.3% Repayment Amount: \$70,000

¹ <https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf> page 20

In the same study, respondents were asked to review websites for online lenders and look at information regarding financing terms. Some websites used footnotes to provide additional information but many used different terms to describe the same thing. Participants noted:

- “It is difficult [to compare when] they are using different models and different terminology.”
- “They don’t like to use the word ‘interest,’ and they dress it up in other ways to conceal the real cost of the loan.”
- “I don’t know what a ‘factor rate’ is.”
- “Full disclosure, like on credit cards or mortgages... is what is necessary. They need to state the actual APR.”

2. Comparison to TILA

The federal Truth in Lending Act regulates, and in some parts, nearly prescribes, the manner and content in which financial information must be disclosed in transactions for offers of credit. In passing TILA, congress agreed that the average person needs clear, standardized information when taking out financing products. Meaningful disclosure terms allow the consumer to more readily compare the various credit terms offered to them and avoid the uninformed use of credit. *Congressional Findings and declaration of purpose* 15 U.S.C. Section 6101 (a). The federal Truth in Lending Act (TILA) only applies to consumer loans, which leaves small business owners without the same disclosure requirements. Recognizing this gap, AB 1235 sought to bring those disclosure requirements to California small businesses. However, these disclosure requirements pertain to the information once a financial product is selected. One can think of this portion as stage two in an act of obtaining credit.

This bill addresses stage one of the act of obtaining credit. This bill addresses the advertising portion of TILA by bringing the state law up to parody and leveling the playing field amongst competitors. As discussed in section 2, the need for transparency and uniformity is demonstratively necessary for small business owners.

3. Continuity of terminology throughout the application process

When a borrower seeks funding, their financing application process can happen online, over the phone or in person. After evaluating information about the borrower and their business to determine their creditworthiness and ability to repay, the lender provides the borrower with one or more offers of financing from which to select. When one offer is made to the borrower, or when the borrower selects one offer from an array of offers, this is considered as “At the time of extending a specific commercial financing offer” under section 22802 of the code” under C.C.R. Section 900(a)(5).

This defined term is important because it is a triggering point for duties imposed on the provider, like the provision of disclosures. At this point, because the borrower has selected a plan, the APR can be calculated, defined and disclosed. The requirement for continuity in terminology to be used throughout the application process is imperative; the need for the borrower to understand the financing terms does not end once they have selected the financing plan. Recognizing this essential piece, New York’s regulations have added guardrails to carry the transparency requirements through the process with the following:

“When a provider states a rate of finance charge or a financing amount to a recipient during an application process for commercial financing, the provider shall also state the rate as an ‘Annual Percentage Rate,’ using that term or the abbreviation ‘APR’.” FIS Section 810

Some industry stakeholders in the receipts-based lending market have raised concerns about the need for responding to flexibility when their borrowers request changes to their funding terms. However, the requirement to “also state the APR when other metrics of pricing are discussed” is required *after* an extension of a specific offer, thus term disclosures, including APR would already be determined.

4. A lighter approach

California has the benefit of looking at the relevant sections of the New York Financial Services Law, which has been binding for the last two years, for implementation success regarding such requirements. The New York law uses prescriptive language and refers to TILA and Regulation Z requirements to calculate APR.

Advocates and stakeholders agree that the state’s unique landscape for fintech growth and development requires a different approach than TILA’s prescriptive standard. The author and advocates want transparency for small business owners—people should be able to make informed choices based on facts, not mistakes— but want to also give finance providers flexibility for their products and any potential innovation.

Arguments in Support

“... Over the last fifteen years, practices from the pre-crisis subprime mortgage market have become common in small business financing. California has been leading responsible small business lending since 2018. SB 362 continues this leadership by tightening up several holes in California’s legal framework that are allowing some brokers and financing companies to take advantage of small businesses.

In 2023, SB 33 passed the Legislature unanimously. It made permanent California’s transparent price disclosure framework for small business financing. However, that disclosure framework remains hobbled, including:

- The current statute that allows providers to calculate the estimated APR for certain forms of financing is too broad, and results in systemic underestimating of APRs;
- One-time disclosure requirements result in unscrupulous providers distracting or deceiving potential borrowers by misrepresenting the cost of financing; and
- Current statute lacks clarity on how its provisions are enforced relative to providers that are not required licensure.
- SB 362 addresses current gaps in California’s small business financing disclosure framework. The bill requires that providers disclose the estimated APR throughout the offering process, wherever 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 for their business. The current statute that allows providers to calculate the estimated APR for certain forms of financing is too broad, and results in systemic underestimating of APRs – which will still need to be fixed.”

Comments from 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. 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.

RECOMMENDED AMENDMENTS:

1. To achieve both transparency and flexibility as to the term “interest” the committee recommends the following amendment.

Amend Fin Code Section 22806 (a): delete “describe” replace with “refer to”. Delete “unless that rate is an annual percentage rate calculated pursuant to Section 940 of Title 10 of the California Code of Regulations.” replace with “in a deceptive manner, including but not limited to using the term ‘simple interest’ in a way that misleads or is likely to materially mislead the recipient, or in a way that is deceptive in accordance with the Business and Professional Code section 17200 and the case law thereunder.”

Ex: (a) A provider shall not use the term “interest” to ~~describe~~ refer to 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.~~ in a deceptive manner, including but not limited to using the term ‘simple interest’ in a way that misleads or is likely to materially mislead the recipient, or in a way that is deceptive in accordance with the Business and Professional Code section 17200 and the case law thereunder.

2. To achieve both transparency and flexibility as to the term “rate” the committee recommends the following amendment.

Amend Fin Code Section 22806 (b): delete “describe” replace with “refer to”. Delete “presented or disclosed during an application process for a commercial financing transaction unless that rate is an annual percentage rate calculated pursuant to Section 940 of Title 10 of the California Code of Regulations.” replace with “in a deceptive manner, including but not limited to, using the term “rate” to describe a metric of financing cost other than the annual interest rate or annual percentage rate calculated pursuant to Section 940 of Title 10 of the California Code of Regulations, in a way that misleads or is likely to materially mislead the recipient, or in a way that is deceptive in accordance with the Business and Professional Code section 17200 and the case law thereunder.”

Ex: (b) A provider shall not use the term “rate” to ~~describe~~ refer to a metric of financing cost ~~presented or disclosed during an application process for a commercial financing transaction unless that rate is an annual percentage rate calculated pursuant to Section 940 of Title 10 of the California Code of Regulations.~~ cost in a deceptive manner, including but not limited to, using the term “rate” to describe a metric of financing cost other than the annual interest rate or annual percentage rate calculated pursuant to Section 940 of Title 10 of the California Code of Regulations, in a way that misleads or is likely to materially mislead the recipient, or in a way that is deceptive in accordance with the Business and Professional Code section 17200 and the case law thereunder.

3. To maintain continuity of transparency throughout the transaction with the customer, the committee recommends that the APR is also stated whenever the provider states other financing metrics.

Amend Fin Code Section 22806 (c) to add “For all communication during any application process” and “ as calculated pursuant to Section 940 of Title 10 of the California Code of Regulations.” after “acronym APR”.

Ex: (c) For all communication during any application process after extending a specific offer 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, the provider shall also state the annual percentage rate of that commercial financing offer by using the term “annual percentage rate” or the acronym “APR.” as calculated pursuant to Section 940 of Title 10 of the California Code of Regulations.

4. To address transparency for floating interest rates in compliance with this section, the committee recommends the following additional language:

Amend Fin Code Section 22806 to add (d) as follows

(d) Notwithstanding the foregoing, use of the term “interest” or “rate” is not considered deceptive or likely to mislead for purposes of this division if the metric of financing cost is an annual interest rate or annual percentage rate (which may be either fixed or floating for the period of the financing) expressed as a margin over an index rate.

REGISTERED SUPPORT / OPPOSITION:

Support (Verified 7/2/25)

Accessity
Ampac Tri-State CDC
California Coalition for Community Investment (CCCI)
California Low-income Consumer Coalition
California Southern SBDC
Cameo - California Association for Micro Enterprise Opportunity
Consumer Federation of California
El Pajaro Community Development Corporation
Hias Economic Advancement Fund
Housing and Economic Rights Advocates (HERA)
ICA Fund

JEDI
Microcare Community Development Solutions
Microenterprise Collaborative of Inland Southern California
Public Counsel
San Joaquin Community Foundation
Small Business Majority
The Responsible Business Lending Coalition
Toss It Up

Opposition (Verified 7/2/25)

None received.

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