Date of Hearing: July 15, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
SB 362 (Grayson) – As Amended July 10, 2025

SENATE VOTE: 38-0

SUBJECT: COMMERCIAL FINANCING: DISCLOSURES

KEY ISSUE: SHOULD THE LEGISLATURE STRENGTHEN CALIFORNIA'S COMMERCIAL FINANCING DISCLOSURE LAW BY PROHIBITING DECEPTIVE USES OF FINANCIAL TERMS SUCH AS "INTEREST" AND "RATE," REQUIRING CONSISTENT DISCLOSURE OF ANNUAL PERCENTAGE RATES DURING THE APPLICATION PROCESS, AND CLARIFYING ENFORCEMENT AUTHORITY UNDER THE CFL AND THE CCFPL?

SYNOPSIS

In 2018, the Legislature enacted SB 1235 (Glazer) Chap. 1011, Stats. 2018, to bring transparency to California's increasingly complex commercial financing marketplace. Modeled after the federal Truth in Lending Act (TILA), SB 1235 created the nation's first commercial financing disclosure law, requiring providers to disclose key terms such as the total cost of financing, payment structure, and an annualized rate. Because calculating an annual percentage rate (APR) for non-loan products can involve estimates, the law delegated to the Department of Financial Protection and Innovation (DFPI) the authority to define disclosure metrics by regulation and temporarily sunset the APR requirement. In 2022, after extensive rulemaking, DFPI finalized regulations requiring estimated APR disclosures for all covered financing products, including sales-based financing and factoring. SB 33 (Glazer) Chap. 376, Stats. 2023, eliminated the sunset and established a statutory safe harbor for providers acting in good faith. That bill passed the Legislature unanimously.

Despite this progress, gaps remain. The current law does not require consistency in terminology throughout the application process, allowing providers to use ambiguous or misleading terms like "simple interest" or "factor rate" in subsequent communications with borrowers. Moreover, enforcement authority for unlicensed providers has remained uncertain. SB 362 addresses these shortcomings by (1) prohibiting use of financial terms like "interest" and "rate" in deceptive ways; (2) requiring providers to state the APR whenever they communicate pricing after extending a specific offer; and (3) clarifying that DFPI can enforce violations under either the California Financing Law (CFL) or the California Consumer Financial Protection Law (CCFPL), depending on whether the provider is licensed. This measure is co-sponsored by the CAMEO Network, Responsible Business Lending Coalition, and the Small Business Majority. This measure was previously heard and passed by the Assembly Committee on Banking and Finance 9-0.

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. Specifically, **this bill**:

1) Prohibits a provider from using the term "interest" to refer to a percentage rate in a deceptive manner, including in the following ways:

   a) Using the term "simple interest" in a way that misleads or is likely to materially mislead the recipient.

   b) Using the term "simple interest" in a way that violates the Unfair Competition Law.

2) Prohibits a provider from using the term "rate" in a deceptive manner, including in the following ways:

   a) Using the term "rate" in a way that misleads or is likely to mislead the recipient.

   b) Using the term "rate" in a way that violates the Unfair Competition Law.

3) Establishes that for all communication during the 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 must also state the annual percentage rate of that commercial financing offer by using the term "annual percentage rate" or the acronym "APR," as provided.

4) Establishes that the use of the term "interest" or "rate" is not deceptive or likely to mislead if the metric of financing cost is an annual interest rate or annual percentage rate that is either fixed or floating for the period of the financing and that is expressed as a margin over an index rate.

5) Provides that a violation of commercial financing disclosure requirements (Section 22800 *et seq*.) by a person licensed under the California Financing Law (commencing with Section 22000) is deemed a violation of the California Financing Law if the violation relates to a commercial financing transaction that is subject to the California Financing Law.

6) Provides that a violation of the commercial financing disclosure requirements (Section 22800 *et seq*.) 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.

EXISTING STATE LAW:

1) Establishes California's Commercial Financing Disclosure Law within Division 9.5 (Division 9.5) of the Financial Code. (Financial Code Sections 22800–22806. All further statutory references are to the Financial Code, unless otherwise specified.)

2) Defines a "provider" to mean a person who extends a specific offer of commercial financing to a recipient. This includes a nondepository institution that partners with a depository institution to offer commercial financing through an online lending platform. A provider that facilitates such financing is not deemed to have engaged in lending or loan origination. (Section 22800 (m).)

3) Defines "commercial financing" as 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. (Section 22800 (d).)

4) Exempts from Division 9.5 the following entities and transactions:

   a) Depository institutions;

   b) Lenders regulated under the federal Farm Credit Act (12 U.S.C. Section 2001 *et seq*.);

   c) Certain floorplan financing offered to automobile dealers, vehicle rental companies, or their affiliates, when the transaction is at least $50,000;

   d) Persons who make no more than one commercial financing transaction in California in a 12-month period, or who make five or fewer such transactions in that period if they are incidental to the person's business. (Section 22801.)

5) Defines a "recipient" as a person offered commercial financing of $500,000 or less by a provider. (Section 22800 (n).)

6) Requires a covered provider to obtain a written acknowledgment from a recipient at the time of the commercial financing offer that the following disclosures were provided:

   a) Total amount of funds provided;

   b) Total dollar cost of the financing;

   c) Term or estimated term;

   d) Method, frequency, and amount of payments;

   e) Description of prepayment policies;

   f) Total cost of financing expressed as an annualized rate. (Section 22802.)

7) Allows providers offering factoring or asset-based lending under a general agreement to disclose example terms in lieu of specific transaction disclosures, including:

   a) Amount financed;

   b) Total dollar cost;

   c) Term or estimated term;

   d) Method, frequency, and amount of payments;

   e) Description of prepayment policies;

   f) Total cost of financing expressed as an annualized rate. (Section 22803.)

8) Directs the DFPI to adopt regulations specifying the content, format, and timing of disclosures under 6)-7). (Sections 22804 (a).)

9) Requires DFPI to adopt additional regulations governing the calculation and disclosure of the annualized rate, including:

   a) Method of calculation and types of fees and charges to include;

   b) Circumstances allowing estimated annualized rates and associated accuracy standards;

   c) Timing, format, and manner of disclosure. (Section 22804 (b).)

10) Establishes the California Financing Law (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. (Section 22000 *et seq*.)

11) Provides that a licensed provider under the CFL may be subject to enforcement by the commissioner under the CFL for any violation of Division 9.5. (Section 22805.)

12) Establishes the California Consumer Financial Protection Law (CCFPL), which makes unfair, deceptive, or abusive acts or practices (UDAAPs) unlawful with respect to consumer financial products or services. (Section 90003 (a)(1).)

13) Defines DFPI's UDAAP authority in commercial financing transactions in Title 10 of the California Code of Regulations. (Title 10 California Code of Regulations Section 1061.)

14) Provides, pursuant to the CCFPL and its implementing regulations:

   a) Authorizes DFPI to promulgate regulations that define unfair, deceptive, and abusive acts and practices in connection with the offering or provision of commercial financing to small business recipients, nonprofits, and family farms. The rulemaking may also include data collection and reporting on the provision of commercial financing or other financial products and services. (Financial Code Section 90009 (e).)

   b) Pursuant to (a), provides rules governing commercial financing products and services, including the following:

      i. Defines "covered entity" to mean a small business, nonprofit, or family farm whose activities are principally directed or managed from California. (Title 10 California Code of Regulations, Section 1060 (d).)

      ii. Defines "covered provider" to mean any person engaged in the business of offering or providing commercial financing or another financial product or service to a covered entity, unless that person is exempted from the CCFPL pursuant to Financial Code Section 90002. (Title 10 California Code of Regulations, Section 1060 (e).)

      iii. Defines "small business" to mean a business entity organized for profit with annual gross receipts of no more than $16,000,000 or the annual gross receipt level as biennially adjusted by the Department of General Services in accordance with Government Code Section 14837 (d)(3), whichever is greater. (Title 10 California Code of Regulations, Section 1060 (i).)

      iv. Provides that it is unlawful for a covered provider to engage or have engaged in any unfair, deceptive, or abusive act or practice in connection with the offering or

provision of commercial financing or another financial product or service to a covered entity. (Title 10 California Code of Regulations, Section 1061 (a).)

v. Provides that an act or practice is unfair if either:

1. The act or practice causes or is likely to cause substantial injury to the covered entity, the injury is not reasonably avoidable by the covered entity, and the injury is not outweighed by countervailing benefits, or

2. The act or practice is unfair under the California Unfair Competition Law and related case law. (Title 10 California Code of Regulations, Section 1061 (b).)

vi. Provides that an act or practice, including a representation or omission, is deceptive if either:

1. The act or practice misleads or is likely to mislead the covered entity, the covered entity's interpretation of the act or practice is reasonable under the circumstances, and the act or practice is material.

2. The act or practice is deceptive under the California Unfair Competition Law and related case law. (Title 10 California Code of Regulations, Section 1061 (c).)

vii. Provides that an act or practice is abusive if either:

1. The act or practice materially interferes with the ability of a covered entity to understand a term or condition of commercial financing or another financial product or service.

2. The act or practice takes unreasonable advantage of:

a. A lack of understanding on the part of the covered entity of the material risks, costs, or conditions of the commercial financing or other financial product or service;

b. The inability of the covered entity to protect its interests in selecting or using commercial financing or another financial product or service; or

c. The reasonable reliance by the covered entity on a covered provider to act in the interests of the covered entity. (Title 10 California Code of Regulations, Section 1061 (d).)

15) Defines "specific commercial financing offer" as a written communication to a recipient quoting a payment amount and cost of financing, based on information from or about the recipient, excluding basic identity or interest in financing. (Title 10 California Code of Regulations Section 900 (a)(29).)

16) Defines "at the time of extending a specific commercial financing offer" to include:

a) The moment a specific offer is quoted;

b) When contract terms are amended in a way that increases the APR, unless to cure a default;

c) Each draw on an open-end credit plan, where disclosures are made in connection with that draw. (Title 10 California Code of Regulations Section 900 (a)(5).)

17) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Business and Professions Code Section 17200 *et seq*.)

18) Defines annual percentage rate and provides a standardized method for its calculation. (Title 10 California Code of Regulations Section 940.)

EXISTING FEDERAL LAW:

1) Requires a creditor who responds orally to any inquiry about the cost of credit to disclose any rate of finance charge solely in terms of the annual percentage rate (APR), regardless of the method used to compute finance charges. In the case of open-end credit, the creditor may also state the periodic rate. In the case of non–open-end credit where interest is computed at a simple annual rate constitutes a major component of the finance charge, the simple annual rate may also be stated. (15 U.S.C. Section 1665a.)

2) Provides that any advertisement stating a finance charge rate must express the rate as an "annual percentage rate," using that term. (12 C.F.R. Section 1026.24(c) (Regulation Z).)

3) Sets forth the rules for calculating and disclosing the annual percentage rate (APR), including requirements for accuracy, computation for mortgage loans, use of APR calculation tools, single add-on rate transactions, and transactions involving a range of balances. (12 C.F.R. Section 1026.22.)

4) Requires that if an advertisement includes certain "triggering terms" related to credit (e.g., down payment amount, number of payments, amount of any payment, or the amount of any finance charge), it must also disclose additional credit terms, including the APR. (12 C.F.R. Section 1026.24(d).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: California has led the nation in establishing transparency standards for small business financing. Building on the foundational work of SB 1235 (2018) and SB 33 (2023), this bill seeks to close remaining gaps in the commercial financing disclosure framework. Specifically, it addresses persistent confusion around commonly used financial terms—such as "interest" and "rate"—and ensures that small business borrowers receive consistent and accurate cost information throughout the financing application process. As explained by 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.

Background and legislative history. In 2016, the Federal Reserve, the U.S. Treasury Department, the Office of the Comptroller of the Currency, and others highlighted the lack of protections for small businesses as a critical gap in the regulatory framework. (*See, e.g.,* U.S. Treasury *Small Business Borrowers Will Likely Require Enhanced Safeguards* (2016), https://www.treasury.gov/connect/blog/Pages/Opportunities-and-Challenges-in-Online-Marketplace-Lending.aspx.) Against this backdrop, in 2018, the Legislature enacted SB 1235 (Glazer) Chap. 1011, Stats. 2018, establishing the first commercial financing disclosure law in the nation. Modeled after the federal Truth in Lending Act (TILA), SB 1235 was enacted in response to the increasing complexity and opacity of nonbank financing products—including sales-based financing, factoring, and merchant cash advances—which often use unfamiliar terminology and nonstandard pricing structures that are difficult for small business owners to evaluate.

SB 1235 requires providers of covered commercial financing products of $500,000 or less to disclose key terms to recipients before consummating a transaction, including the total amount of funds provided, total dollar cost of the financing, the payment method and frequency, prepayment policies, and the total cost of financing expressed as an annualized rate. However, recognizing that calculating an Annual Percentage Rate (APR) for non-loan products can be complex and may require estimation, the Legislature delegated to DFPI the authority to determine the appropriate disclosure metric through regulation. To allow DFPI time to promulgate those rules, SB 1235 included a sunset provision applicable only to the annualized rate disclosure requirement.

Over the course of four years, DFPI undertook an extensive rulemaking process to define disclosure methods for nontraditional products. In 2022, DFPI adopted regulations requiring the use of estimated APR for all covered financing products, including sales-based financing, factoring, and asset-based lending. The rules permit providers to use either a historical method or an underwriting method to estimate APR, depending on the available data.

To make the estimated APR disclosure permanent, the Legislature enacted SB 33 (Glazer) Chap. 376, Stats. 2023. SB 33 eliminated the sunset clause, affirming the Legislature's commitment to uniform pricing transparency for commercial financing transactions. It also codified a statutory safe harbor for providers who make estimated APR disclosures in good faith and in accordance with DFPI regulations or guidance. SB 33 passed unanimously in both houses of the Legislature, despite continued opposition from industry stakeholders who argued that estimated APRs can be misleading when based on projected sales or variable terms. Supporters—including small business advocacy organizations and community lenders—argued that APR remains the most meaningful metric for comparing financing options, especially when products vary significantly in form but not function.

Existing law. The legal regime regulating small business financing in California remains multi-layered. While banks and credit unions are governed by federal and state regulation, nondepository institutions offering loans are subject to the CFL, and many alternative financing providers are regulated only under the CCFPL. SB 1235's disclosure requirements were deliberately placed outside the CFL to ensure they apply broadly to both licensed and unlicensed

providers. However, this structural choice has led to uneven enforcement authority—DFPI can pursue violations against CFL licensees under the CFL (Section 22805), but the enforcement pathway against unlicensed providers is not explicit, and thus remains less clear. Moreover, while the disclosures required under SB 1235 and SB 33 are effective at the moment a financing offer is extended, current law does not expressly prevent providers from reverting to opaque or misleading terminology in subsequent conversations with the borrower.

This bill strengthens California's commercial financing disclosure law by improving transparency in provider communications, promoting consistent use of pricing terminology, and clarifying DFPI's enforcement authority. Specifically, the bill prohibits commercial financing providers from using certain financial terms in a deceptive manner and ensures that key cost disclosures—including the APR—are provided consistently throughout the application process.

Prohibits deceptive use of "interest" and "rate." The bill prohibits a provider from using the term "interest" to refer to a percentage rate in a way that misleads or is likely to materially mislead the recipient. This includes any use of the term "simple interest" that is deceptive under California's Unfair Competition Law (UCL). The bill also prohibits a provider from using the term "rate" in a deceptive or misleading manner. These restrictions are likewise cross-referenced to the UCL.

The apparent purpose for cross-referencing to the UCL is to clarify that for communications that obscure or misrepresent the cost of financing, these representations may constitute an unfair or deceptive act or practice subject to enforcement under the UCL by the Attorney General or other authorized public prosecutors. These provisions are modeled, in part, on analogous restrictions under the CCFPL and are intended to prevent bait-and-switch marketing or other conduct that materially misleads small business borrowers evaluating offers for commercial financing.

Nonetheless, the proposed subdivisions (a) and (b) largely restate existing law, as the deceptive use of financial terminology is already prohibited under broad consumer protection statutes. California has long treated consumer protection as a matter of public importance, enacting broad statutes to prohibit unfair, deceptive, and abusive business practices. The Unfair Competition Law, the False Advertising Law (Business and Professions Code Section 17500), and the Consumer Legal Remedies Act (Civil Code Section 1750 *et seq*.) each authorize enforcement against misleading conduct in commerce. However, these laws are general in scope, and the Legislature often enacts more specific standards for conduct already prohibited under broader statutes. SB 362 follows that tradition. *Nevertheless, as this bill moves through the Legislature, the author may wish to clarify the existing language in subdivisions (a) and (b) and consider substituting a more objective standard, replacing the existing language with something such as, "A provider shall not use the term "interest" or "rate" in a deceptive way that could reasonably result in the recipient being misled."*

Ensuring consistent APR disclosure throughout the application process. The bill also requires that after a specific commercial financing offer has been extended, whenever a provider states a charge, pricing metric, or financing amount to the potential recipient during the application process, the provider must also state the APR of the offer. This disclosure must use the full term "annual percentage rate" or the abbreviation "APR," and is intended to provide consistency and comparability as the recipient evaluates the offer.

An Annual Percentage Rate (APR) is a standardized measure of the cost of credit that includes all fees and interest rates charged by a lender, created by Congress in 1968 through enactment of

TILA. Generally, it is expressed as a percentage and is calculated based on the amount of the loan and the duration of the loan. APR generally provides borrowers with the most pertinent information on the actual price they would pay to borrow money. Its ubiquity across the lending space makes it particularly useful: it is a bottom-line number borrowers can compare among lenders and investment products.

California has long embraced APR as the preferred metric for commercial financing transparency. SB 33 (2023), building on SB 1235 (2018), made estimated APR disclosures permanent and established a statutory safe harbor for providers that comply in good faith. DFPI, through its regulations, affirmed that APR is the most meaningful and comparable disclosure metric across financing types.

The Federal Reserve appears to concur – in a 2019 report on Small Business Borrowers, the Federal Reserve found that "nontraditional pricing metrics" like "simple interest" and "fee rate" can misguide small businesses into unnecessarily expensive financing. (Board of Governors of the Federal Reserve System, *Uncertain Times: What Small Business Borrowers Find When Browsing Online Lender Website*, December 2019, *available at* https://www.federalreserve.gov/publications/files/what-small-business-borrowers-find-when-browsing-online-lender-websites.pdf.)

While the APR disclosure mandate is in existing law, it has not stopped predatory lenders from taking advantage of this state's small business owners. The sponsors of this measure point to reporting, as well as anecdotal evidence of continued deceptive practices—especially among minority-owned small business owners. Research by the University of Michigan, specifically regarding California small business owners, finds business owners being charged average APRs of 94% APRs as high as 358%. The average California business using predatory loans is charged 178% of its net income, with Black- and Latino-owned businesses being disproportionately targeted with expensive lending products. (Lenderman, Daria, et al., *Public Banking in California: Learning from the Bank of North Dakota*, July 7, 2025, University of Michigan Poverty Solutions, *available at https://poverty.umich.edu/publications/public-banking-in-california-learning-from-the-bank-of-north-dakota/#:~:text=Today%20in%20California%2C%20small%20businesses,reaching%20a%20shocking%20358%25%20APR..)*

This bill ensures that the APR disclosure requirement—currently triggered only "at the time of extending a specific commercial financing offer" (Title 10 California Code of Regulations Section 900(a)(5))—applies throughout the full lifecycle of the application process. That means any time the provider discusses costs or pricing after an offer is made, the APR must also be stated. For example, if a provider initially discloses a 12% APR for a $50,000, five-year product, and the borrower later requests $100,000, the provider would need to disclose the new APR reflecting the changed terms. Current law does not require this subsequent disclosure—SB 362 would fix that.

Safe harbor for use of "interest" or "rate" in conventional contexts. The bill clarifies that it is not considered deceptive or misleading to use the terms "interest" or "rate" when referring to an annual interest rate or annual percentage rate that is either fixed or floating and expressed as a margin over an index rate—such as "Prime + 5%." According to the sponsors, this type of pricing model is commonly used in traditional credit products, particularly commercial loans,

and involves either a fixed rate set at closing based on the index at that time or a floating rate that adjusts over time as the index fluctuates.

By codifying this exception, the bill ensures that the prohibition on deceptive use of terms like "interest" or "rate" does not interfere with conventional pricing structures or terminology that are widely understood in commercial finance. The safe harbor thus preserves clarity for providers and borrowers alike, while reinforcing the bill's broader goal of preventing genuinely misleading or opaque disclosures.

Enforcement. This bill strengthens the enforcement framework for California's commercial financing disclosure law by clarifying how violations of Division 9.5 are treated under three overlapping regimes: the California Financing Law (CFL), the California Consumer Financial Protection Law (CCFPL), and the Unfair Competition Law (UCL).

Under existing law, commercial financing providers licensed under the CFL are already required to comply with Division 9.5's disclosure provisions. SB 362 clarifies that any violation of Division 9.5 by a CFL licensee constitutes a violation of the CFL when the transaction is governed by that law. This replaces existing Section 28005, which already states that a violation of the commercial disclosure law by a licensee is a violation of the CFL. Under the prohibition pursuant to the CFL, DFPI may take enforcement action against licensed providers using the full range of its administrative tools, including suspension or revocation of licensure, monetary penalties, and cease-and-desist orders. (*See* Sections 22159-22172.)

Importantly, SB 362 also addresses enforcement gaps with respect to unlicensed commercial financing providers, where existing law is currently silent. For financing transactions that fall outside the CFL's licensing framework but are still subject to the disclosure requirements under Division 9.5, the bill deems any violation of the disclosure requirements an unfair, deceptive, or abusive act or practice (UDAAP) under the CCFPL. This clarification empowers DFPI to regulate and sanction unlicensed actors using its civil and administrative authority under the CCFPL. Available remedies include injunctive relief, restitution, and civil penalties of up to $10,000 per violation—or $25,000 for reckless conduct. (Sections 90003, 90012-90015.)

In addition to DFPI's authority, the bill's provisions may be enforced under the Unfair Competition Law (Bus. & Prof. Code Section 17200 *et seq*.), which prohibits unlawful, unfair, or fraudulent business acts and misleading advertising. SB 362 explicitly prohibits the deceptive use of terms like "interest," "rate," and "simple interest," and provides that such conduct is actionable under the UCL. However, it is worth noting that a cross-reference is not required for UCL enforcement: a violation of any statute—including the commercial financing disclosure law—can be independently actionable under the UCL's "unlawful" prong.

California's Unfair Competition Law provides an expansive cause of action for any unlawful, unfair, or fraudulent business act or practice. Courts have long held that UCL claims may be predicated on violations of other laws, including Division 9.5 and other industry-specific regulations. (*See Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co*. (1999) 20 Cal.4th 163, 180; *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.)

The Attorney General (and local public prosecutors) are authorized to pursue enforcement actions against those servicers for unlawful, unfair, or fraudulent practices. (Business and Professions Code Sections 17204, 17206, 17207.) UCL enforcement actions by public

prosecutors do not require proof of intent or actual injury — only that a practice falls within one of the statute's three prongs. This low threshold makes the UCL a powerful tool for regulators to seek civil penalties, restitution, and injunctive relief. The UCL authorizes injunctive relief and restitution for private plaintiffs (Section 17203), although it does not permit compensatory damages or penalties. Standing is limited to those who suffer an economic injury in fact and lost money or property as a result of the unfair practice (Section 17204; *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320–21). Thus, a commercial borrower misled by a provider's improper use of financial terminology or omission of an APR disclosure may be able to seek relief under the UCL, provided they can establish actual economic harm. However, compensatory and punitive damages are not available, and civil penalties may only be imposed in actions brought by public entities.

Finally, proposed Section 22807 (which replaces Section 22805) deems a violation of Division 9.5 to be a violation of the CFL or the CCFPL, depending on whether the provider is licensed or unlicensed. However, neither the CFL nor the CCFPL currently includes parallel language expressly incorporating Division 9.5 by reference. This could lead to confusion or unintended gaps in enforcement. A person attempting to comply with or enforce either the CFL or CCFPL could miss the relevance of Division 9.5 entirely. To avoid such "amendment by implication"—a disfavored approach in statutory construction (see*, McLaughlin v. State Bd. of Education* (1999) 75 Cal.App.4th 196, 219–220)*—the author may wish to consider adding cross-references to Division 9.5 directly within the CFL and CCFPL.*

First Amendment considerations. As raised by the Senate Judiciary Committee's analysis of this measure, although no opponent has raised the issue, it is worth considering whether the bill's restrictions on the use of certain financial terms implicate providers' speech rights under the First Amendment. Specifically, the bill regulates commercial speech by prohibiting the deceptive use of terms such as "rate," "interest," and "simple interest," and by requiring providers to disclose the APR when discussing financing terms after a specific offer has been extended. These provisions are modeled on disclosure standards under the federal Truth in Lending Act and fall squarely within the state's authority to prevent misleading or deceptive commercial practices. Under *Zauderer v. Office of Disciplinary Counsel* (1985) 471 U.S. 626, the government may compel disclosure of accurate, factual, and noncontroversial information when reasonably related to a legitimate governmental interest, such as protecting consumers from deceptive marketing. Similarly, under *Central Hudson Gas & Electric Corp. v. Public Service Comm'n* (1980) 447 U.S. 557, restrictions on misleading commercial speech are constitutionally permissible and subject to a more deferential standard of review.

Because the bill's speech-related provisions are factual, content-neutral, and tailored towards preventing consumer deception in the commercial financing market, they are likely to withstand constitutional scrutiny under either *Zauderer* or *Central Hudson*. These types of disclosure mandates and terminology restrictions are routinely upheld when designed to prevent fraud or ensure informed consumer decision-making.

ARGUMENTS IN SUPPORT*:* A broad coalition representing over 500 for-profit financing companies and nonprofit advocates for economic opportunity, as well as thousands of small business owners, explain their support of SB 362:

> 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. We thank you for authoring this bill to create a fair financial marketplace where good actors compete fairly and small businesses thrive.

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;

● 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.

ARGUMENTS IN OPPOSITION*:* The Electronic Transactions Association, the leading trade association representing the payments industry, opposes this measure, arguing that the bill's required APR disclosure for commercial financing will create confusion and uncertainty for small businesses:

APR as applied to Commercial Financing: ETA is concerned that SB 362, by mandating an annual percentage rate or estimated annual percentage rate (collectively "APR") disclosure for commercial financing, will create significant confusion and uncertainty for small businesses trying to make informed decisions about the cost of financing products. The Truth in Lending Act ("TILA") was enacted strictly for consumer transactions, not commercial transactions and does not take into account the unique payment features of sales-based financing products, which do not have a fixed term, fixed payments, or have an absolute right to repay. Since these types of products do not have a defined term or a periodic payment amount, it would require a funding company to assume or estimate parts of the APR formula, which only increases complexity.

• APR calculations are highly duration-sensitive for loan terms of less than a year.

In other words, the APR increases rapidly the shorter the loan term. For example, the APR of typical short-term commercial loans will fluctuate widely based on only small differences in the term of the loans

• Alternative Measurement: ETA urges the Committee to consider Total Cost of Capital ("TCC") as the method for disclosing the cost of financing products. The TCC method has been enacted in Connecticut, Florida, Georgia, Kansas, Missouri, Utah, and Virginia, and is a key measurement that matters to small business owners. TCC is more useful for comparing the absolute cost of a loan with a small business's expected return from investing the loan proceeds. A business that expects a short-term return on its investment would likely choose a loan with a shorter term and higher monthly payments to minimize TCC, even though that loan is likely to have a higher APR.

With this, opposition appears to be re-litigating an argument against APR that has been considered—and thoroughly rejected—by the Legislature. The Legislature has sided overwhelmingly with the small business advocates in advocating for the use of APR or estimated APR, most recently supporting a bill in 2023 to remove a sunset, making the annualized rate disclosure apply indefinitely. (SB 33 (Glazer), Chap. 376, Stats. 2023.) Every member of the Senate and Assembly voted "aye" on that measure.

REGISTERED SUPPORT / OPPOSITION:

Support

Cameo - California Association for Micro Enterprise Opportunity (co-sponsor)
Responsible Business Lending Coalition (co-sponsor)
Small Business Majority (co-sponsor)
Accessity
Ampac Tri-state CDC
Asociacion De Emprendedor@s
California Southern SBDC
California Capital Financial Development Corporation
California Coalition for Community Investment (CCCI)
California Low-income Consumer Coalition
Consumer Federation of California
El Pajaro Community Development Corporation
Hias Economic Advancement Fund
Housing and Economic Rights Advocates (HERA)
Housing Trust Silicon Valley
Ica Fund
Jedi
Microcare Community Development Solutions
Microenterprise Collaborative of Inland Southern California
Pacific Community Ventures
Public Counsel
San Joaquin Community Foundation
The Responsible Business Lending Coalition
Toss It Up
Uptima Entrepreneur Cooperative

Opposition

Electronic Transactions Association
Innovative Lending Platform Association

Other

Secured Finance Network

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