

## ASSEMBLY THIRD READING

AB 2116 (Schiavo)

As Amended April 16, 2026

Majority vote

**SUMMARY**

- 1) This bill would expand the purposes of the California Consumer Financial Lending (CCFPL) to include the protection of small businesses from abusive financial practices, as specified.
- 2) The bill would, commencing January 1, 2028, prohibit a person from engaging in the business of offering to provide or providing commercial financing products without first registering with the commissioner, as specified. It requires the Department of Financial Protection and Innovation (DFPI) to prescribe rules regarding registration requirements applicable to covered persons.
- 3) The bill would impose various duties on commercial financing providers and brokers, including, among other things, prohibiting the taking of a confession of judgment or power of attorney at any time before a default, as specified.

**Major Provisions**

*See Banking and Finance Committee analysis for a detailed list of major provisions.*

Amends the CCFPL, which requires covered persons to register with and be regulated by the DFPI by:

- 1) Defining "Commercial financing brokerage services" to mean the following acts in connection with a commercial financing transaction:
  - a) Transmitting sensitive data about a prospective recipient to a commercial financing provider with the expectation of compensation in connection with making a referral.
  - b) Making a referral to a commercial financing provider under an agreement with the commercial financing provider that a prospective recipient referred by the person to the commercial financing provider meets certain criteria involving sensitive data.
  - c) Participating in a commercial financing negotiation between a commercial financing provider and prospective recipient.
  - d) Counseling, advising, or making recommendations to a prospective recipient about a commercial financing transaction based on the prospective recipient's sensitive data.
  - e) i) Participating in the preparation of commercial financing documents, including commercial financing applications, other than providing a prospective recipient blank copies of commercial financing documents.
    - ii) Transmitting information that is not sensitive data to a commercial financing provider at the request of a prospective recipient shall not, by itself, constitute participation in the preparation of commercial financing documents within the meaning of this subparagraph.

- f) Communicating to a prospective recipient a commercial financing provider's commercial financing approval decisions.
  - g) Charging a fee to a prospective recipient for services related to a prospective recipient's application for a commercial financing transaction from a commercial financing provider.
- 4) Defining "Commercial financing transaction" to mean a consummated commercial financing transaction that is equal to or less than five hundred thousand dollars (\$500,000) and for which a disclosure is provided in accordance with subsection (a) of Section 920 of Title 10 of the California Code of Regulations.
  - 5) Defining "recipient" to mean a small business whose activities are principally directed or managed from California.
    - a) For purposes of determining whether activities are "principally directed or managed from California," a registrant may rely on any relevant written representation by the small business, nonprofit, or family farm, including a business address provided in any application or agreement for commercial financing or other financial product or service.
  - 6) Defining "Small business" to mean a business entity organized for profit with annual gross receipts of no more than sixteen million dollars (\$16,000,000) or the annual gross receipt level as biennially adjusted by the Department of General Services in accordance with Section 14837 of the Government Code, whichever is greater.
    - a) For purposes of determining a business entity's annual gross receipts, a covered provider may rely on any relevant written representation by the business entity, including information provided in any application or agreement for commercial financing.
  - 7) Specifies "Commercial financing transaction" does not include a commercial financing transaction in which the recipient is a dealer, as defined in Section 285 of the Vehicle Code, or an affiliate of the dealer, or a vehicle rental company, or an affiliate of the 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 the commercial financing transaction.
  - 8) Requires registration by a person to engage in offering or providing commercial financing products to California residents.
  - 9) Prohibits a consumer finance provider (CFP) or a commercial finance broker (CFB) from taking a confession of judgement or power of attorney under the terms of a commercial financing transaction agreement or contract.
  - 10) Prohibits a CFP or a CFB from including a provision in a commercial financing transaction agreement or contract that authorizes the CFP or CFB to attach or garnish any of a recipient's money held in an account in a depository institution.
  - 11) Deems a commercial financing transaction found to be unconscionable under specified divisions of the Civil Code shall be deemed to be a violation of this division and subject to remedies in this division.

- 12) Prohibits a CFP or a CFB from including a provision in a contract or agreement with a recipient that limits or restricts the recipient from disclosing information that the recipient gains from the recipient's business activities with the registrant, including, but not limited to, terms or conditions of a product or service offered by the registrant.
- 13) Requires a CFB to clearly and conspicuously display on their internet website the average and maximum annual percentage rates for the commercial financing transactions facilitated by them in the most recent calendar year.
- 14) Requires the DFPI to prescribe rules regarding registration requirements applicable to covered persons seeking to offer or provide commercial financing products.

## COMMENTS

### 1) *Background*

The commercial financing landscape presents a diverse array of products with varying structures and terms, resulting in significantly disparate regulatory treatment under existing California law. Typically, financing products either align closely with legal definitions of "commercial loans" or exist as alternative products that, while not formally classified as loans, fulfill a functionally equivalent purpose—advancing capital or assets to a business for future repayment alongside interest or finance charges. In California, non-bank commercial loan providers are typically required to secure licensure from the Department of Financial Protection and Innovation (DFPI) and adhere to the California Financing Law (CFL). However, a regulatory gap exists for commercial financing products that fall outside the formal definition of a loan; these can currently be provided without a license and under significantly less DFPI oversight.

Baseline legal protections for small businesses within these markets are established by the California Consumer Financial Protection Law (CCFPL). Through the enactment of AB 1864 (Limón, Chapter 157, Statutes of 2020), the Legislature authorized the DFPI to promulgate regulations defining unfair, deceptive, and abusive acts and practices (UDAAPs) regarding commercial financing provided to small businesses, nonprofits, and family farms. The DFPI finalized these regulations in August 2023, thereby empowering the department to initiate enforcement actions against UDAAPs in small business financing sectors. This enforcement authority definitively carried over to the CFL in 2025 with the enactment of AB 825 (Limón) Chapter 355, Statutes of 2025.

Beyond these UDAAP provisions, the CCFPL further grants the DFPI authority to mandate the registration of covered persons offering consumer financial products or services within the state.

### 2) *Current oversight of commercial financing.*

Current law does not impose the same degree of regulation of, or oversight for, transactions relating to non-loan financing products offered to businesses. As it stands, entities offering financing products of \$500,000 or less have to make specified disclosures regarding the terms of the financial products.<sup>1</sup> This bill would broaden the scope of state oversight regarding commercial financing activities, extending regulatory authority beyond the current parameters

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<sup>1</sup> Fin.Code section 22802 and 22803.

established by the California Financing Law (CFL). The landscape of "commercial financing transactions" generally bifurcates into two distinct classifications: those formally designated as "commercial loans" under the CFL and those alternative products that fall outside this definition. Notable examples within the latter category include merchant cash advances, accounts receivable financing, invoice factoring, and various revenue-based financing products. While commercial financing providers may offer a portfolio that includes both CFL-compliant loans and non-loan products, current law limits the Department of Financial Protection and Innovation's (DFPI) oversight primarily to activities governed by the CFL, leaving non-loan financing transactions largely outside the department's existing regulatory reach.

### 3) *What this bill does.*

This bill proposes to expand DFPI oversight over a subcategory of commercial financing transactions that fall just out of reach of the CFL and meet certain requirements. First, the borrower must be a small business, which is defined as an entity organized for profit with no more than \$16 million in annual gross revenue. Second, the commercial financing transaction is limited to \$500,000. These parameters help tailor the bill in scope to the intended target of small business owners who may have less bargaining power or negotiations sophistication. For example, in seeking a \$750,000 (three quarters million dollar) loan, it is far more likely that even if a business were smaller in size, it would not be unreasonable to assume that the small business owner has resources to secure legal advice to navigate the transaction.

The author has recently made amendments to exempt auto floorplan lenders because their business model happens to fall within the scope of this bill, but the parties are not in the same intended risk category.

One note is that the bill construction is unorthodox. Instead of prohibiting certain acts, certain acts are prohibited from inclusion in the commercial financing transaction agreement. The author may wish to consider defining the inclusion of these prohibited acts in a contract for commercial financing as unconscionable, as well as specifically prohibiting the acts.

### **According to the Author**

"Small businesses are the backbone of our economy, and they deserve a fair and transparent marketplace when seeking capital. Right now, traditional lenders operate under clear rules, but certain high-cost non-loan products — like merchant cash advances — function outside that framework. AB 2116 simply ensures consistent oversight so that all financing providers play by the same rules. This bill doesn't limit access to capital, rather it promotes transparency, strengthens accountability, and protects hardworking entrepreneurs from deceptive practices, helping our small businesses continue to grow and thrive."

### **Arguments in Support**

"AB 2116 solves two problems:

- 1) The "wild west" of small business brokering – Today, brokers routinely "steer" small business owners into financing that pays the broker the highest fee while charging the small business owner an unnecessarily high rate, echoing one of the causes of the subprime mortgage crisis. In fact, investigative reports have shown that many subprime mortgage brokers who lost their mortgage licenses simply moved over to the unregulated "wild west" of small business financing.

*AB 2116 empowers small business owners to make informed decisions and report bad actors, by establishing an oversight framework and transparency about the products and costs associated with the product that a commercial broker offers the small business owner on behalf of a high-cost commercial lender.*

- 2) Unfair practices in the financing shadows - While small business lenders are subject to oversight by DFPI, similar products that purport not to be loans evade these requirements and operate in the shadows. Additionally, California's 2022 ban on "confessions of judgement" (SB 688) is easily circumvented by legal devices used to take money straight from a small business owner's bank account without legal recourse. And "confidentiality clauses" are used to bully a small business owner into keeping silent about their experience and unexpected costs.

*AB 2116 will catalyze fair lending to small businesses by preventing bad-actor financing companies from taking unfair advantage of their competition and of small business customers.*

As for-profit financing companies ourselves, as well as nonprofit advocates and small business owners, we commend your efforts to pass this bill to create a fair financial marketplace where good actors compete fairly and small businesses thrive." *Jointly submitted by Responsible Business Lending Coalition, Small Business Majority, and CAMEO Network (co-sponsors)*

### **Arguments in Opposition**

"We understand and support the bill sponsor and proponents' goals of creating a level playing field with a consistent, uniform regulatory framework for all commercial financing providers, regardless of the product offered. However, commercial financing loans and lines of credit are already regulated under Division 9 of the California Financial Code, also known as the California Financing Law (CFL). Instead of adding non-loan products to the current licensing scheme created by the CFL, AB 2116 attempts to shoehorn these commercial products under the California Consumer Financial Protection Law (CCFPL).

Consumer and commercial financing products are vastly different products in vastly different markets. Consumer loans are intended for financing personal consumption-driven activities (like purchasing a home, car, or television). In contrast, business loans are designed to provide a return on invested capital. Moreover, evaluating a small business's credit risk is more complex than assessing a consumer's credit risk. Metrics like credit score, income, and other traditional underwriting metrics are not valuable for the commercial market, and it has been widely reported that about 50% of small businesses will fail within 5 years. (Citation omitted) The CFL recognizes the difference in these markets and has specific regulations in Division 9 for consumer loans (Chapter 2) and commercial loans (Chapter 3)." *Innovative Lending Platform Association*

## **FISCAL COMMENTS**

*Comments from the analysis of the Assembly Appropriations Committee.*

Annual costs in the low millions of dollars to DFPI for additional attorney, examiner, and support staff and information technology resources to implement the registration program (Financial Protection Fund).

Although fees and assessments from registrants may help offset ongoing administration and enforcement costs, revenues will depend on the number of entities registering to engage in covered activities. A General Fund (GF) loan may be necessary, especially in the initial years, to the extent revenues are unlikely to fully cover costs.

The Legislative Analyst's Office recently warned of GF structural deficits of around \$35 billion per year in the 2027-28 fiscal year and ongoing.

## **VOTES**

### **ASM BANKING AND FINANCE: 9-0-0**

**YES:** Valencia, Chen, Dixon, Fong, Krell, Michelle Rodriguez, Blanca Rubio, Schiavo, Harabedian

### **ASM APPROPRIATIONS: 15-0-0**

**YES:** Wicks, Hoover, Aguiar-Curry, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache, Ta, Tangipa

## **UPDATED**

VERSION: April 16, 2026

CONSULTANT: Desiree NguyenOrth / B. & F. / (916) 319-3081

FN: 0002780