SENATE RULES COMMITTEE AB 2116
Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 2116
Author: Schiavo (D)
Amended: 8/13/26 in Senate
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 6-0, 6/17/26
AYES: Grayson, Cervantes, Hurtado, Reyes, Richardson, Strickland
NO VOTE RECORDED: Niello

SENATE JUDICIARY COMMITTEE: 13-0, 6/30/26
AYES: Umberg, Niello, Allen, Ashby, Caballero, Durazo, Laird, Reyes, Stern, Valladares, Wahab, Weber Pierson, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/13/26
AYES: Cervantes, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

ASSEMBLY FLOOR: 73-0, 5/22/26 - See last page for vote

SUBJECT: Commercial financing

SOURCE: CAMEO Network, California Low-Income Consumer Coalition, Responsible Business Lending Coalition, and Small Business Majority

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DIGEST: This bill expands the scope of the California Financing Law to cover specified commercial financing transactions offered to small businesses and establishes requirements and prohibitions on commercial financing providers and brokers engaged in such transactions.

ANALYSIS:

Existing law:

1) Establishes the following, pursuant to the California Financing Law (CFL):

a) Requires the licensure and oversight by the Department of Financial Protection and Innovation (DFPI) of businesses that provide commercial loans in the state. (Division 9 of the Financial Code, Section 22000 et seq.)

b) Defines "commercial loan" as a loan of a principal amount of $5,000 or more, or any loan under an open-end credit program, the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes. (Financial Code Section 22502)

2) Establishes the following, pursuant to Division 9.5 of the Financial Code, commencing with Section 22800:

a) Requires specified disclosures related to commercial financing, which includes, among other things, a requirement to disclose the annualized rate for a commercial financing offer presented to a recipient. (Financial Code Section 22802 and 22803)

b) Defines "commercial financing" to mean 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. (Financial Code Section 22800(d))

c) Defines "provider" as a person who extends a specific offer of commercial financing to a recipient. Clarifies that "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. (Financial Code Section 22800(m))

d) Defines "recipient" as a person who is presented a specific commercial financing offer by a provider that is equal to or less than $500,000. (Financial Code Section 22800(n))

e) Exempts the following persons or categories of transactions from the division:

i) A depository institution.

ii) A commercial financing transaction secured by real property.

iii) 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. (Financial Code Section 22801)

3) Does the following, pursuant to the California Consumer Financial Protection Law (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. (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 exempt 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, subdivision (d)(3), whichever is greater. (Title 10 California Code of Regulations, Section 1060 (i))

iv) Provides that 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))

This bill:

1) Prohibits a person from engaging in the business of a commercial financing provider or commercial financing broker, on or after July 1, 2028, without obtaining a license from DFPI pursuant to the California Financing Law (CFL) or while awaiting an approval or denial of a completed application submitted on or before July 1, 2028.

The following provisions of this bill are operative on January 1, 2028.

2) Subjects commercial financing providers and commercial financing brokers to the administrative and enforcement authorities provided by the CFL to DFPI.

3) Defines the following terms, among others:

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

   b) "Commercial financing broker" means a person who is engaged in the business of performing any of the following acts in connection with commercial financing made by a commercial financing provider:

      i) Transmitting sensitive data about a prospective recipient to a commercial financing provider with the expectation of compensation in connection with making a referral.

      ii) 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.

      iii) Participating in a commercial financing negotiation between a commercial financing provider and prospective recipient.

      iv) Counseling, advising, or making recommendations to a prospective recipient about a commercial financing transaction based on the prospective recipient's sensitive data.

      v) Participating in the preparation of commercial financing documents, including commercial financing applications, other than providing a prospective recipient blank copies of commercial financing documents. Provides that 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.

vi) Communicating to a prospective recipient a commercial financing provider's commercial financing approval decisions.

vii) 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.

c) "Commercial financing provider" means a person who extends a specific offer of commercial financing to a recipient, including, but not limited to, a nondepository institution that 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.

d) "Recipient" means a small business or small business owner who is presented a specific commercial financing offer by a commercial financing provider that is equal to or less than $500,000.

e) "Referral" means the introduction of a prospective recipient to a commercial financing provider, or the delivery of a prospective recipient's contact information to a commercial financing provider, for the purpose of making an introduction.

f) "Small business" means a business entity organized for profit with annual gross receipts of the greater of no more than $16 million or the level as biennially adjusted by the Department of General Services, as specified. Provides specified exemptions to the proposed regulations of commercial financing transactions, including but not limited to, transactions secured by real property.

4) Provides that a commercial financing agreement entered into on or after January 1, 2028, is not enforceable if the commercial financing provider is not licensed under the CFL.

5) Prohibits a commercial financing provider or broker from the following acts:

a) Taking a confession of judgment or any power of attorney at any time before a default by a recipient under the terms of a commercial financing transaction agreement or contract.

b) 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.

c) Provides that a commercial financing transaction found to be unconscionable pursuant to Section 1670.5 of the Civil Code shall be deemed to be in violation of the CFL.

6) Requires a commercial financing broker to clearly and conspicuously display on their website the average and maximum annual percentage rates for the commercial financing transactions facilitated by the broker in the most recent calendar year.

7) Requires a commercial financing provider to file annually a report with DFPI with information related to the type, size, and price of commercial financing transactions provided to recipients in the preceding calendar year.

8) Exempts specified transactions or persons from the proposed licensing framework.

9) Codifies the existing regulation related to unfair, deceptive, and abusive acts and practices into the CFL.

10) Makes conforming changes to various general administrative and enforcement provisions within the CFL to reflect the addition of commercial financing transactions to the scope of the licensing law.

Comments

Background. The markets for commercial financing offer a variety of products that have different structures and terms, and the regulatory treatment of such products varies significantly under existing California law. Generally, there are financing products that fit neatly under legal definitions and interpretations as "commercial loans," and there are financing products that may not be considered "loans" but that serve a similar basic function – providing a business with funds (or some other asset) that is expected to be repaid in the future, along with interest or other finance charges. In most cases, providers of commercial loans are required to be licensed by the Department of Financial Protection and Innovation (DFPI) and subject to oversight by the department pursuant to the California Financing Law (CFL), unless the provider is exempt from the CFL, such as is the case for banks that are subject to different licensing or chartering laws. Non-loan commercial financing products, however, may be provided without a license and with significantly less oversight from DFPI.

Commercial financing providers are less regulated than financing providers that serve consumers, likely based on the assumption that commercial transactions occur between parties that have higher levels of sophistication and knowledge than those involved in consumer transactions. But in the case of small business owners, is this assumption valid? It seems likely that many small business owners have a similar level of financial literacy, legal knowledge, and bargaining power as a typical consumer, which would support a similar policy approach that establishes baseline rules and oversight of providers of commercial financing to small businesses.

Scope of transactions covered by this bill. This bill extends state oversight of commercial financing activities beyond that which is currently provided by the CFL. Within the category of "commercial financing transactions," there are two general categories: those transactions deemed "commercial loans" for the purposes of the CFL and those not deemed "commercial loans." Examples in this latter category include products described as merchant cash advances, accounts receivable financing, invoice factoring, and other revenue-based financing products. Providers of commercial financing may offer both commercial loans covered by the CFL and non-loan financing products not covered by the CFL.

This bill expands the CFL to cover a subset of commercial financing transactions that meet all of the following criteria:

- Amount of financing: $500,000 or less.
- Borrower characteristics: Must be a small business located in California with less than $19 million of annual revenue.[1]
- Non-exempt provider: Certain entities and transactions are exempted by the bill, mostly in line with exemptions provided by the CFL for commercial loan transactions.

Given this scope, the new regulations proposed by this bill should affect few transactions between relatively sophisticated parties. The maximum transaction amount of $500,000 acknowledges that even if a borrower is considered a small business, that borrower is more likely to retain financial and legal advice, if necessary, to navigate larger and more complex transactions than the small

[1] Per the limit established by DGS as of the published date of this analysis.

business may be able to handle in-house. Additionally, the requirement that a borrower must be considered a "small business" in order for the regulations to apply means that small transactions between financing providers and larger business borrowers will not be subject to the new regulations. While the transaction amount and revenue threshold to be deemed a "small business" are arbitrary, the proposed amounts appear reasonably tailored to protect small business borrowers without adding unnecessary burdens to transactions between relatively sophisticated parties.

As defined by this bill, a commercial financing transaction includes both loan and non-loan credit products. A provider or broker of a commercial loan is already required to be licensed under the CFL based on existing law, but this bill introduces several new conduct requirements that apply to commercial loans of $500,000 or less that are offered to small businesses. The requirements are reasonably tailored to protect small businesses from predatory practices, such as taking confessions of judgment. The proposed disclosure and reporting requirements make these financing markets more transparent, which has benefits for borrowers, fair competition, and focused supervision by DFPI.

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

According to the Senate Appropriations Committee, "the Department of Financial Protection and Innvoation (DFPI) estimates costs of $1.57 million in the first year and $1.46 ongoing (Financial Protection Fund) for an additional examiner, support staff, and one-time IT systems implementation expertise to implement the new licensure program. Annual assessment fees from licensees will help offset these ongoing administration and enforcement costs; however, actual revenues will depend on the number of licensees."

SUPPORT: (Verified 8/12/26)

Cameo Network (co-source)
California Low-income Consumer Coalition (co-source)
Responsible Business Lending Coalition (co-source)
Small Business Majority (co-source)
Access Plus Capital
Accessity
Asian Pacific Islander Small Business Collaborative
Asian, INC.
Asociacion De Emprendedor@s
California Coalition for Community Investment (CCCI)
Cameo - California Association for Micro Enterprise Opportunity

Community Development Services
Consumer Federation of California
Economic Development and Financing Corporation
El Pajaro Community Development Corporation
Friends of the Public Bank East Bay
Greenlining Institute; the
Ica
Ica Fund
Icon CDC
Jefferson Economic Development Institute
Microcare Community Development Solutions
Microenterprise Collaborative of Inland Southern California
Narratur Studio
National Consumer Law Center
Pacific Community Ventures
Public Counsel
Rise Economy
Santa Clarita Valley Chamber of Commerce
The Greenlining Institute
The Responsible Business Lending Coalition
United Chambers of Commerce
Uptima Entrepreneur Cooperative
Valley Industry Association of Santa Clarita
West Business Development Center
Women's Economic Ventures

OPPOSITION: (Verified 8/12/26)

Financial Technology Association
Revenue Based Finance Association

ARGUMENTS IN SUPPORT: CAMEO Network, California Low-Income Consumer Coalition, Responsible Business Lending Coalition, and Small Business Majority write in support:

> Small business owners need access to capital – be it a loan or other ‘non-loan’ product. Currently, non-loan products are not subject to the same oversight as regulated loans. This bill requires companies that offer non-loan products and their brokers to be licensed by the Department of Financial

> Protection and Innovation to receive the same oversight as traditional small business products…
>
> AB 2116 empowers the State to ensure that small business owners can 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…
>
> 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.

ARGUMENTS IN OPPOSITION: Revenue Based Finance Coalition writes in opposition to a specific provision of the bill, while supporting the broad concept of licensure:

> California law already protects businesses against unconscionable contracts… This long-established doctrine already applies to commercial financing transactions.
>
> Referencing this unconscionability standard in Section 30 of AB 2116 as a violation of the CFL does not create a new substantive protection for California businesses. Instead, it converts an existing equitable contract doctrine into an automatic regulatory violation carrying separate licensing and enforcement consequences…
>
> Commercial financing providers should be able to evaluate their compliance with the CFL using clear, objective statutory standards. By tying licensing compliance to an inherently subjective judicial doctrine, Section 30 of AB 2116 introduces unnecessary legal uncertainty for responsible providers attempting to comply with California law in good faith. The result will be increased litigation costs for commercial financing providers and the DFPI, in addition to burdening California's courts.

ASSEMBLY FLOOR: 73-0, 5/22/26
AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Ávila Farías, Bains, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel,

Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Tangipa, Valencia, Wallis, Ward, Wilson, Zbur, Rivas
NO VOTE RECORDED: Arambula, Bauer-Kahan, Chen, Gabriel, Celeste Rodriguez, Ta, Wicks

Prepared by: Michael Burdick / B. & F.I. /
8/17/26 10:47:43

****** END ******