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Previously Shelved California Commercial Finance Licensing Bill Poised to Become Law

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In an unexpected turn of events, California Assembly Bill 2116 passed the state legislature on August 20, 2026. The bill now heads to the desk of Governor Gavin Newsom. Unless the governor vetoes it, AB 2116 will dramatically expand the coverage of the California Financing Law ("CFL") with respect to commercial-purpose transactions beginning in 2028. AB 2116 had been held in a "suspense file" due to concerns that expanding the CFL would worsen California's state budget deficit. California's legislature ultimately passed AB 2116 despite opposition from California's Department of Finance due to the potential budget impact.

AB 2116 amends the CFL to require a CFL license for a "commercial financing provider" and a "commercial financing broker." The bill will require a CFL license for factoring and revenue-based financing providers and brokers. The licensing requirement is effective July 1, 2028. The bill also expands the CFL's exemption from California's 10% per year constitutional usury limit to any person licensed under the CFL, regardless of the form of a transaction. As a result, recharacterization will cease to be a concern for a CFL-licensed commercial financing provider.

AB 2116 also adds a new section to the CFL governing commercial financing transactions with small businesses. The term "small business" means a business entity organized for profit with annual gross receipts of no more than $16,000,000, with this dollar threshold subject to adjustment for inflation every two years. For purposes of determining a business entity's annual gross receipts, a licensee may rely on any relevant written representation by the business entity, including information provided in any application or agreement for commercial financing.

The new provisions add several consumer-type protections to commercial-purpose financing transactions. For example, the new provisions:

- prohibit confessions of judgment;
- incorporate by reference California's unconscionability standard in Cal. Civ. Code § 1670.5;
- prohibit a provision in a contract or agreement that limits or restricts the recipient (i.e., the small business) from disclosing information that the recipient gains from the recipient's business activities with the commercial financing provider, including, but not limited to, terms or conditions of a product or service offered by the commercial financing provider; and
- require a commercial financing broker to clearly and conspicuously display on its website the

average and maximum annual percentage rates for the commercial financing transactions facilitated by it in the most recent calendar year.

AB 2116 also adds a new definition of the term "commercial financing broker." The new definition covers a person who does any of the following in connection with commercial financing made by a commercial financing provider:

- transmits sensitive data about a prospective recipient to a commercial financing provider with the expectation of compensation in connection with making a referral;
- makes 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;
- participates in a commercial financing negotiation between a commercial financing provider and prospective recipient;
- counsels, advises, or makes recommendations to a prospective recipient about a commercial financing transaction based on the prospective recipient's sensitive data;
- participates in the preparation of commercial financing documents, including, but not limited to, commercial financing applications, other than providing a prospective recipient with blank copies of commercial financing documents or transmitting non-sensitive data to a commercial financing provider at the request of a prospective recipient;
- communicates a commercial financing provider's approval decisions to a prospective recipient; or
- charges 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.

However, a person may do any of the following without being a "commercial financing broker":

- perform support tasks, including, but not limited to, typing, word processing, data entry, filing, billing, answering telephone calls, taking and receiving messages, and scheduling, in support of the performance by a broker of any of the activities described in the last three items above;
- furnish a consumer report to a licensee by a consumer reporting agency in accordance with subsection 15 U.S.C. § 1681b(a) or (c) (the federal Fair Credit Reporting Act);
- furnish a consumer credit report, as defined in Cal. Civ. Code § 1785.3 (California's Consumer Credit Reporting Agencies Act), to a licensee by a consumer credit reporting agency in accordance with Cal. Civ. Code § 1785.11(a) or (b)(1);
- furnish a prequalifying report, as defined in Cal. Civ. Code § 1785.3, to a licensee by a consumer credit reporting agency in accordance with Cal. Civ. Code § 1785.11(b)(2); and
- distribute or disseminate to a prospective recipient of a provider's marketing materials or factual information about the provider, its lending activities, or its loan products, including, but not

limited to, the provider's interest rates, the provider's minimum or maximum loan amounts or loan periods, or a general description of the provider's underwriting criteria.

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