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Expansive New Commercial Financing Licensing Requirement Signed into Law in California

6 min read
Oct 2, 2026

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On September 30, 2026, California's Governor Gavin Newsom signed AB 2116 into law. **Effective July 1, 2028,** this new law will require brokers and providers of commercial financing, including merchant cash advance (MCA), factoring arrangements, and certain forms of lease-based financing, to obtain a license under the California Financing Law (CFL).

AB 2116 also includes substantive prohibitions and requirements, including an ability-to-repay analysis and a prohibition on confessions of judgment. These provisions go into effect on **January 1, 2028.**

Implications for Commercial Financing Providers

The passage of AB 2116 has significant implications for commercial financing providers and raises a number of unanswered questions that stakeholders should monitor closely:

- As discussed further below, AB 2116 provides that agreements entered into after January 1, 2028, without a pending application or proper licensure, may be deemed unenforceable. The legislature may need to amend the law to properly address what happens to transactions that fall into the six-month gap between January 1, 2028, when the unenforceability provisions go into effect, and **July 1, 2028,** when the licensure requirement becomes effective.

- Existing CFL licensees who are already authorized to make and broker certain types of commercial financing arrangements that fall into the new licensing categories may need to amend or supplement their licenses. While the NMLS checklist provides some information about the amendment process for adding a new category to a CFL license (e.g., a finance lender adding brokering to its license), the Department of Financial Protection and Innovation (the "DFPI") may need to issue guidance on how licensees should proceed if they want to expand their existing license into one or both of the new categories.

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- The definition of “commercial financing provider” specifically targets the bank partnership model by providing that the term includes a nondepository institution that partners with a depository institution to extend commercial financing through an online platform administered by the nondepository institution.

History of AB 2116

When AB 2116 was first introduced by Assemblywoman Pilar Schiavo back in February 2026, it had similar aims but used a completely different mechanism. This initial version of the bill would have created registration requirements under California’s Consumer Financial Protection Law (CCFPL) for brokers and providers of commercial financing.

The CCFPL currently limits the registration requirements that the Department of Financial Protection and Innovation can create to “offering or providing a **consumer** financial product or service.”

In June, AB 2116 was overhauled with a focus on licensure under the CFL.

What Types of Commercial Financing are Included?

In determining which forms of commercial financing to include, the legislature took its cue from its first-in-the-nation commercial financing disclosure law (SB 1235) passed back in 2018. The following forms of commercial financing are included:

- Accounts receivable purchase transactions, including factoring;
- Asset-based lending transactions (MCAs);
- Commercial loans;
- Commercial open-end credit plans; and
- Lease financing.

Commercial loans and commercial open-end credit plans are included in this definition, even though a CFL license was already required in order to broker or make these loans. Commercial financing transactions of more than $500,000 do not trigger the licensing requirement.

Following SB 1235 and in a continued effort to limit usage of the bank partnership model in California, a commercial financing provider also includes “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.”

Defining Commercial Financing Broker

While the CFL has lacked a sufficient definition of "broker" since its inception, AB 2116 provides a robust definition of "commercial financing broker."

"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:

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 a 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) Subject to the clause
(ii) Participating 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.
(iii) 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.
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.

Categories of Licensees

Prior to the enactment of AB 2116, there were three categories of licensees under the CFL: finance lenders, brokers, and program administrators. AB 2116 adds commercial financing provider and commercial financing broker to this list as separate categories. Because licensees are limited to the activities allowed by the specific category of license chosen during the application process, a licensed finance lender, for instance, cannot commence brokering without amending its license.

What is unclear based on the language of AB 2116 is whether or not a finance lender or broker who has been making or brokering commercial loans under its CFL license would need to amend its license to add "commercial financing provider" or "commercial financing broker" in order to continue making or brokering these commercial loans.

AB 2116 does, however, include the following provision:

> A licensed commercial financing provider may act as a commercial financing broker at its licensed place of business without obtaining an additional license as a commercial financing broker under this division only if the licensee has notified the commissioner of the action in writing.

We would recommend that the DFPI use rulemaking to provide additional clarity for how CFL licensees can amend their license to include these new categories.

Ambiguity in the Effective Dates

It is worth noting that there is a discrepancy in the language of AB 2116 regarding these effective dates. While the licensing requirement does not become operative until July 1, 2028, and entities that have submitted a completed application by that date will be allowed to continue operating while awaiting approval or denial, AB 2116 also renders commercial financing transactions entered into between January 1 and July 1, 2028, unenforceable unless the provider is licensed or has submitted a completed application by January 1:

A commercial financing agreement is not enforceable unless any of the following requirements is met:

1. The person providing the commercial financing transaction is a licensed commercial financing provider.
2. The person providing the commercial financing transaction has submitted a complete application and is awaiting approval or denial pursuant to subdivision (b) of Section 22100.6.
3. The commercial financing transaction was entered into prior to **January 1, 2028.**

The legislature should seek to amend this provision to avoid creating conflicting requirements.

How Should Brokers and Providers of Commercial Financing Prepare?

Brokers and providers of non-loan commercial financing to businesses in California should immediately begin reviewing the licensing and substantive requirements of AB 2116 in order to build out a compliance plan.

While July 1, 2028, is nearly two years away, the CFL licensing process is already a lengthy one that we anticipate will grow lengthier through this expansion. Entities are allowed to continue operating as long as a completed application is submitted by **July 1, 2028.** However, if the application is subsequently denied, the entity will have to cease brokering and/or providing commercial financing in California to avoid an enforcement action from the DFPI.

For entities that currently have a CFL license as a finance lender or broker, there is more time to watch how this develops. It is unlikely that a de novo application will be required for a licensed broker or provider of commercial loans who seeks to continue brokering or providing the same type of commercial loans in California. However, if

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the entity wants to broker or provide non-loan commercial financing, there may be regulatory hoops to jump through before July 1, 2028.

We will continue to monitor this law and its implementation and will provide updates as the effective date approaches.

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