

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 728 (Padilla)
Version: March 25, 2025
Hearing Date: April 22, 2025
Fiscal: Yes
Urgency: No
AWM

SUBJECT

California Consumer Financial Protection Law: commercial financing

DIGEST

This bill implements a registration program under the California Consumer Financial Protection Law (CCFPL) for persons offering non-loan commercial financing or commercial financing brokerage services to California residents and small businesses, as defined, to be overseen by the Department of Financial Protection and Innovation (DFPI), and imposes restrictions on non-loan commercial financing products offered to small businesses.

EXECUTIVE SUMMARY

Under state and federal law, loans — except when offered by a bank, credit union, or similar institution regulated under separate laws — are regulated under the California Financing Law (CFL). Financing products other than loans — such as asset-based financing or merchant cash advances — offered to consumers are covered by the CCFPL. Non-loan financing products offered for business purposes, however, are not similarly regulated.

The author argues that small businesses are more similarly situated to consumers with respect to non-loan financing products, and that, as a result, small businesses need additional protections from misleading or unscrupulous finance providers. Accordingly, this bill extends the CCFPL to give DFPI oversight over commercial financing providers and brokers who offer non-loan commercial financing products to small businesses located in California, as defined. The bill also requires, beginning January 1, 2027, covered commercial financing providers and brokers to register with the DFPI. The author has agreed to a minor amendment clarifying that the bill's requirements apply only to small business commercial financing transactions of \$500,000 or less.

This bill is sponsored by CAMEO Network, the Responsible Business Lending Coalition, and Small Business Majority. This bill is opposed by the Innovative Lending Platform Association. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 5-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the 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. (Fin. Code, div. 9, §§ 22000 et seq.)
- 2) Requires, under the CFL, the licensure of entities that provide certain consumer or commercial loans in the state, as administered and overseen by the DFPI. (Fin. Code, div. 9, ch. 1, art. 3, §§ 22100 et seq.)
 - a) A “consumer loan” is a loan, whether secured by real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes. (Fin. Code, § 22203.)
 - b) A “commercial loan” is a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes. (Fin. Code, § 22502.)
- 3) Establishes, in Division 9.5 of the Financial Code (Division 9.5), disclosure requirements related to commercial financing. (Fin. Code, div. 9.5, §§ 22800 et seq.)
- 4) Exempts from the requirements in 2):
 - a) A provider that is a depository institution.
 - b) A provider that is a lender regulated under the federal Farm Credit Act.
 - c) A commercial financing transaction secured by real property.
 - d) A commercial financing transaction in which the recipient is a dealer, as defined, or a vehicle rental company, and other specified requirements are met.
 - e) Any person who makes no more than one commercial financing transaction in California in a 12-month period or any person who makes 5 or fewer commercial financing transactions in a 12-month period that are incidental to the business of the person relying on the exemption. (Fin. Code, § 22801.)
- 5) Defines the following relevant terms within Division 9.5:
 - 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 other than personal, family, or household purposes; for purposes of determining whether financing is covered by 2), the provider may rely on any written statement of intended purposes signed by the recipient, as specified.
- b) "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.
 - c) "Provider" means a person who extends a specific offer of commercial financing to a recipient, and includes a nondepository institution which enters into a written agreement with a depository 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 person who is presented a specific commercial financing offer by a provider that is equal to or less than \$500,000. (Fin. Code, § 22800.)
- 6) Establishes the CCFPL, which gives the DFPI oversight over entities engaged in the business of offering or providing consumer financial products or services. (Fin. Code, div. 24, §§ 90000 et seq.)
- 7) Defines the following relevant terms within the CCFPL:
- a) "Consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual, or the estate, trust, or joint trust of an individual, however denominated.
 - b) "Consumer financial product or service" means either (1) a financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes; or (2) a financial product or service.
 - c) "Financial product or service" means (1) extending credit and servicing extensions of credit, as specified; (2) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, if specified conditions are met; (3) providing real estate settlement services; (4) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer; (5) selling, providing, or issuing stored value or payment instruments, subject to specified conditions; (6) providing check cashing, check collection, or check guaranty services; (7) providing payments or other financial data processing products or services to a consumer by any technological means, as specified; (9) collecting, analyzing, maintaining, or providing consumer report information or other account information, as specified; (10) collecting debt related to any consumer financial product or service; (11) directly or indirectly brokering the offer or sale of a franchise in this state or on behalf of another; (12) offering another

- financial product or service as defined by regulation in the DFPI. (Fin. Code, § 90005.)
- 8) Exempts from the CCFPL a variety of entities, including entities licensed under specified other state laws, such as a person acting under the authority of a CFL license as a finance lender or broker. (Fin. Code, § 90002.)
 - 9) Authorizes the DFPI to conduct examinations on a periodic basis of a registrant for the purposes of assessing compliance with consumer financial laws, obtaining information about the activities and compliance systems or procedures of the registrant, and detecting and assessing risks to consumers, small businesses, and to markets for consumer financial products and services. (Fin. Code, § 90010.)
 - 10) Authorizes the DFPI to investigate suspected, and to take action against, violators of the CCFPL, including through administrative penalties and a civil action in the name of the People of the State of California brought in the superior court. (Fin. Code, § 90013.)

This bill:

- 1) States that the Legislature finds and declares:
 - a) That small business owners are often similarly situated as consumers with regards to their sophistication and bargaining power relative to providers of financial services and products.
 - b) Many of the rationales supporting legal protections for consumers apply also to small business owners.
 - c) Small businesses have a better chance to survive and grow if they are able to access safe and effective financial products and are protected from unfair, deceptive, or abusive practices when accessing financial products and services.
 - d) It is the intent of the Legislature that the CCFPL protect small businesses from abusive financial practices.
 - e) The CCFPL is intended, among other things, to promote the interests of small businesses and protect them from harm in connection with financial practices and services, in manners similar to those undertaken for consumers.
- 2) Adds the following definitions to the CCFPL:
 - a) "California resident" has the same meaning as "resident" as defined within the Revenue and Taxation Code.
 - b) "Commercial financing" has the same meaning as defined within Division 9.5 of the Financial Code.
 - c) "Commercial financing brokerage services" means, subject to 2)(d), the following acts in connection with a commercial financing transaction: (1) transmitting sensitive data about a protective recipient to a commercial

- financing provider with the expectation of compensation in connection with making a referral; (2) making a referral to a commercial financing provider pursuant to 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; (3) participating in a commercial financing negotiation between a commercial financing provider and prospective recipient; (4) counseling, advising, or making recommendations to a prospective recipient about a commercial financing transaction based on the prospective recipient's sensitive data; (5) participating in the preparation of commercial financing documents, including commercial financing applications, other than providing a recipient blank copies of commercial financing documents; (6) communicating to a prospective recipient a commercial financing provider's commercial financing approval decisions; or (7) 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.
- d) "Commercial financing brokerage services" does not include (1) performing support tasks in support of a broker, as specified; (2) furnishing a consumer report to a covered person by a consumer reporting agency in accordance with federal law; (3) furnishing a consumer credit report to a covered person by a consumer credit reporting agency, in accordance with state law; (4) furnishing a prequalifying report to a covered person by a consumer credit reporting agency, in accordance with state law; or (5) distributing or disseminating to a prospective recipient of a provider's marketing materials or factual information about a 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.
 - e) "Sensitive data" means a bank account number, a bank statement, a credit or debit card account number, or a credit score.
 - f) "Commercial financing product" means either commercial financial transactions or commercial financing brokerage services, as defined in the CCFPL.
 - g) "Commercial financing transaction" means a consummated commercial financing transaction for which a disclosure is provided in accordance with specified regulations propounded by the DFPI.
 - h) "Recipient" means a small business whose activities are principally directed or managed from California; for purposes of determining whether a business's activities are so directed or managed, 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.
 - i) "Small business" means a business entity organized for profit with annual gross receipts of no more than \$16 million or the annual gross receipt level as

- biennially adjusted by the Department of General Services (DGS), whichever is greater; for purposes of determining whether an entity is a small business, 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.
- 3) Provides that, commencing January 1, 2027, a person shall not engage in the business of offering to provide or providing commercial financing products to California residents without first registering with the DFPI in accordance with rules adopted under 5), below.
 - 4) Imposes the following restrictions and requirements on a commercial financing provider or a commercial financing broker (collectively, a “covered entity”):
 - a) A covered entity shall not take 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) A covered entity shall not include a provision in a commercial financing transaction agreement or contract that authorizes a covered entity to attach or garnish any of a recipient’s money held in an account in a depository institution.
 - c) A commercial financing transaction found to be unconscionable pursuant to Civil Code section 1670.5 shall be deemed in violation of the CCFPL and subject to the CCFPL’s remedies.
 - d) A covered entity shall not include 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.
 - e) A commercial financing broker shall clearly and conspicuously display on their website the average and maximum percentage rates for the commercial financing transactions facilitated by them in the most recent calendar year.
 - 5) Requires the DFPI, on or before January 1, 2027, to prescribe rules regarding registration requirements applicable to covered persons seeking to offer or provide commercial financing products.

COMMENTS

1. Author’s comment

According to the author:

Small businesses are struggling to access the responsible capital they need to grow, especially in the post-COVID recovery. Small business owners are heavily

marketed to buy alternative financing products that may not be loans, including merchant cash advances (MCAs) and factoring, which Federal Reserve research refers to specifically as “potentially higher-cost and less-transparent credit products.” Although California’s Department of Financial Protection & Innovation (DFPI) has oversight over small business loans, currently, there is no oversight of these non-loan types of commercial financing. The bill could thus improve access to capital and innovation in small business financing by establishing a level playing field of competition and transparency for both loan and non-loan commercial financing. It would also protect borrowers from predatory lending practices that are harming businesses, families, and communities.

2. Background on regulation and oversight of companies offering consumer and commercial loans.

The legal regime regulating loans and other financing products is complex. Banks, trust companies, savings and loan associations, and other traditional banking entities are regulated under industry-specific federal and state laws.¹ Consumer and commercial loans and lines of credit offered by other business entities are regulated by the DFPI and must obtain a license under the CFL.² And the CCFPL regulates non-loan financial products offered to consumers – financial products that do not fit within the definition of a “loan” but serve the same purpose.³

Current law does not, however, 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,⁴ and the CCFPL – though primarily focused on consumer loans – extends some baseline protections to small businesses.⁵ Additionally, the DFPI adopted regulations that took effect in August 2023 which allow it to take enforcement actions relating to unfair, deceptive, and abusive acts in small business financing markets.⁶

According to the author and supporters of the bill, the relative lack of oversight for transactions relating to commercial non-loan financing products is less of a concern when the recipient of the financing is a large business; generally, these businesses are expected to be sophisticated enough to be able to avoid predatory or abusive financial products. They argue that small businesses, however, are more akin to consumers in terms of financial sophistication and risk of exploitation.

¹ See Fin. Code, § 22050.

² Fin. Code, div. 9, §§ 22000 et seq.

³ *Id.*, div. 24, §§ 90000 et seq.

⁴ *Id.*, div. 9.5, §§ 22800 et seq.

⁵ *Id.*, div. 24, §§ 90000 et seq.

⁶ Cal. Code Regs., tit. 10, §§ 1060-1061.

3. This bill extends the CCFPL to small business commercial financing transactions not covered by the CFL

This bill is intended to close the regulatory gap for non-loan commercial financing products offered to small businesses. To that end, this bill extends the DFPI's oversight of financial products under the CCFPL to include oversight of non-loan commercial financing products and transactions when the borrower is a small business located in California and has less than \$18 million of annual revenue.⁷ The bill also limits its application to financing transactions of \$500,000 or less, through the incorporation of certain regulations; the author has agreed to amend the bill to make the \$500,000 cap more explicit. The bill excludes from its new requirements the same entities excluded from the CFL, which are regulated under other different federal or state regimes.

The specific oversight measures implemented under the bill are:

- Beginning January 1, 2027, a person engaging in the business of offering to provide or providing commercial financing products to California residents must register with the DFPI, in accordance with rules that the DFPI will adopt.
- A commercial financing provider or a commercial financing broker shall not take a confession of judgment or any power of attorney at any time before a default by a commercial financing recipient under the terms of a commercial financing transaction agreement or contract.
- A commercial financing provider or a commercial financing broker shall not include a provision in a commercial financing transaction agreement or contract that authorizes a commercial financing provider or commercial financing broker to garnish any of a recipient's money held in an account in a depository institution.
- A commercial financing transaction found to be unconscionable pursuant to Civil Code section 1670.5 is deemed a violation of the CCFPL and subject to the same remedies.
- A commercial financing provider or a commercial financing broker shall not include 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 registered commercial financing provider, including, but not limited to, terms or conditions of a product or service offered by the registrant.
- A commercial financing broker shall clearly and conspicuously display on their website the average and minimum annual percentage rates for the commercial financing transactions facilitated by them in the most recent calendar year.

⁷ The bill sets the annual revenue ceiling at the greater of \$16 million or the annual gross receipt level as biennially adjusted by DGS; on the date this analysis was released, DGS's annual gross receipt level was set at \$18 million. (See DGS, Apply for or Re-Apply for Certification as a Small Business and/or Disabled Veteran Business Enterprise, <https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Certify-or-Re-apply-as-Small-Business-Disabled-Veteran-Business-Enterprise#accordion-c3cc5597-d6e8-40ab-b459-d2b91e55bda4/> (link current as of April 16, 2025).)

The bill's price ceilings – limiting the bill's application to commercial financing transactions of up to \$500,000, with a business making no more than \$18 million per year – are intended to protect small businesses without unduly restricting big businesses' transactions. According to the Senate Banking and Financial Institutions Committee's analysis of this bill, which is incorporated here by reference, these ceilings appear reasonably tailored to protect small business owners without adding unnecessary burdens to relatively sophisticated parties. Committee staff has not received any opposition to, or heard any concerns about, these monetary thresholds.

Many of these protections are similar or identical to protections this Committee has voted on previously, albeit in a different context. SB 869 (Glazer, 2023) and SB 1482 (Glazer, 2024), both of which this Committee passed, contained similar protections for small businesses, but placed them in the CFL rather than in the CCFPL. There is some debate among stakeholders regarding whether the CCFPL, rather than the CFL, is the appropriate place to add protections for non-loan consumer products. The DFPI, which will be tasked with implementation and oversight of the bill, has not weighed in on the issue.

4. Amendments

As noted above, the author has agreed to amend the bill to make it more clear that the bill applies only to small business financing transactions of \$500,000 or less. The amendment is as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

At page 8, in line 39, after "transaction" insert "that is equal to or less than five hundred thousand dollars (\$500,000) and"

5. Arguments in support

According to the bill's sponsors:

SB 728 solves two problems:

1) The "wild west" of small business brokering – Small businesses today are routinely "steered" by brokers into financing that pays the broker the highest fee while charging the small business 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.

SB 728 empowers small business owners to make informed decisions and report bad actors, by establishing a licensing framework and transparency about the products that a commercial broker offers on behalf of a high-cost commercial lender.

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

SB 728 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.

6. Arguments in opposition

According to the Innovative Lending Platform Association:

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, auto, or television). In contrast, business loans are designed to provide a return on invested capital. Moreover, evaluating a small business' credit risk is more complex than assessing a consumer's. Metrics like credit score, income, and other traditional underwriting metrics are not as valuable for the commercial market, and everyone is familiar with the statistics about half of small businesses failing within the first year. The CFL recognizes the difference in these markets and has specific regulations in Division 9 for consumer loans (Chapter 2) and commercial (Chapter 3).

Division 9's regulatory framework is a licensing framework. Commercial loan and line-of-credit lenders and brokers must obtain a license from the Department of Financial Protection and Innovation (DFPI) to operate in California. SB 728 is intended to require providers of non-loan products not covered under Division 9 and brokers of these products to register with DFPI. However, SB 728 creates a confusing, overlapping regulatory regime that requires commercial lending entities already lending under the CFL to register different products under the CCFPL. This split regulatory regime is burdensome and does not make sense for commercial financing.

For over two years, we have advocated for updating the definitions in Division 9 to include providers and brokers of these non-loan products, creating a single, uniform, and clearly understood regulatory framework for commercial financing products.

We respectfully request that the Senate Judiciary Committee reject Senate Bill 728 until it can adequately achieve the proponents' and sponsor's stated goals of

bringing currently unregulated commercial financing products under the oversight of DFPI to the same level as regulated products.

SUPPORT

CAMEO Network (co-sponsor)

Responsible Business Lending Coalition (co-sponsor)

Small Business Majority (co-sponsor)

OPPOSITION

Innovative Lending Platform Association

RELATED LEGISLATION

Pending legislation:

SB 825 (Limón, 2025) clarifies that the CCFPL's enforcement exemption for persons or employees acting under the authority of certain licenses, certificates, or charters issued by the DFPI does not prevent the Commissioner of the DFPI from using the CCFPL's authority to enforce the CCFPL's prohibition on deceptive or abusive acts or practices. SB 825 is pending before this Committee and is set to be heard on the same date as this bill.

SB 362 (Grayson, 2025) strengthens requirements related to pricing disclosures for commercial financing transactions and clarifies the DFPI's enforcement authority for violations of those requirements. SB 362 is pending before this Committee and is set to be heard on the same date as this bill.

Prior legislation:

SB 1482 (Glazer, 2024) was substantially similar to SB 896 (Glazer, 2023) when it was passed by this Committee, but it was eventually amended by the author so that it would have established a registration program for commercial financing providers; the Assembly Appropriations Committee then amended out most of the bill's effective provisions. SB 1482 died on the Assembly Floor.

SB 869 (Glazer, 2023) would have expanded the CFL to include protections for non-loan commercial financing, including provisions and restrictions substantially similar to the ones in this bill. SB 869 died in the Senate Appropriations Committee.

SB 33 (Glazer, Ch. 376, Stats. 2023) removed the sunset provision put in place by SB 1235 (Glazer, Ch. 1011, Stats. 2018) on a specific disclosure term required for entities offering commercial financing products not covered by the CFL.

AB 1864 (Limón, Ch. 157, Stats. 2020) enacted the CCFPL.

SB 1235 (Glazer, Ch. 1011, Stats. 2018) established disclosure requirements for specified entities extending commercial financing offers of less than \$500,000, including entities offering commercial financing in forms not covered by the CFL.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 5, Noes 0)
