

LEGAL UPDATES

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California Strikes Again: New Commercial Financing Law Reaches Bank Partnerships and Ties Contract Enforcement to Licensing

California has substantially expanded its commercial financing licensing requirements, and borrowers may be able to avoid repaying companies that fail to obtain a required license. Under AB 2116, signed September 30, 2026, covered financing agreements entered into beginning in 2028 will be unenforceable unless the provider is licensed or qualifies for an exception. Companies that have relied on limited regulatory enforcement now face a risk that comes from their own borrowers, who may be able to use the licensing failure to resist repayment even if California's regulators never take action.

The law also expressly covers certain nonbanks that "arrange for the extension of commercial financing by the depository institution" through their own online lending platforms. Those nonbanks will need their own licenses, even though the bank remains the lender. California does not need to prove that the fintech, rather than the bank, made the loan before requiring the fintech to be licensed, because it has written those platforms directly into the licensing regime.

An Unlicensed Provider May Not Be Able to Enforce Its Contract

New Financial Code section 22658 provides that a covered commercial financing agreement is "not enforceable" unless the provider (i) holds a commercial financing provider license, (ii) has a qualifying complete application pending, or (iii) entered into the transaction before January 1, 2028. To rely on the application exception, the provider must have submitted a complete application by July 1, 2028, and still be awaiting approval or denial.

Purchasers and secured lenders should not assume that acquiring or taking a security interest in a financing agreement will eliminate an enforceability problem arising from the provider's licensing status. Their diligence and contractual protections should address whether the provider is licensed or qualifies for an exception.

A Bank Partnership Does Not Eliminate the Nonbank's Licensing Obligation

A "commercial financing provider" includes a nonbank that has a written agreement with a depository institution to arrange financing through an online lending platform that the nonbank administers. The statute clarifies that presenting an offer on the bank's behalf does not, by itself, make the nonbank the originator.

This mirrors the approach California already takes in its commercial financing disclosure law. Banks and credit unions keep their statutory exemptions, but those exemptions do not automatically extend to a separate nonbank platform.

Section 22658 does not expressly address what happens when an exempt bank originates the loan but its nonbank platform lacks a required license. The statute's wording gives the bank a reasonable argument. Section 22658 turns on whether "the person providing the commercial financing transaction" is licensed, and the provider definition states that a platform's offer on the bank's behalf "shall not be construed to mean" that the platform "originated" the financing. On one reading of those provisions, the bank is the person providing the loan, the California Financing Law does not apply to banks, and the platform's licensing failure therefore would not make the bank's loan agreement unenforceable. The statute does not state that result expressly, and we expect this to be a common question for banks and their platform partners.

The platform itself would still face the consequences of operating without a license, and a borrower may argue for the opposite reading, since the platform is the party that extended the offer. Banks should confirm that their platform partners are pursuing licenses and should expect borrowers to raise the question in collection actions.

The Law Covers a Broad Range of Financing Products and Intermediaries

AB 2116 covers more than conventional business loans. Its definition of commercial financing includes accounts-receivable purchase transactions such as factoring, as well as asset-based lending, open-end credit, and qualifying lease financing. The new chapter generally applies to offers of \$500,000 or less to a qualifying small business or its owner. The business must be organized for profit and satisfy an annual gross-receipts limit of \$16 million, or a higher inflation-adjusted state threshold if applicable.

The new chapter exempts financing secured by real property and certain financing to vehicle dealers and vehicle rental companies. It also exempts a company that makes “one or fewer” covered transactions in California in a 12-month period, or “five or fewer” transactions that are “incidental to the business” of the company.

Referral and marketplace businesses should also review the new broker definition. It can cover a company that sends bank statements or income information to a provider for referral compensation, helps prepare an application, recommends financing based on sensitive applicant data, or communicates an approval decision. The statute preserves exclusions for certain support work and the distribution of general marketing information.

July 2028 Is Not the Only Date That Matters

The new commercial-financing chapter, including section 22658, becomes operative January 1, 2028. The separate prohibition on conducting business without a provider or broker license becomes operative July 1, 2028, subject to an exception for timely, complete applications awaiting a decision.

Section 22658 incorporates the pending-application exception in section 22100.6, even though that section does not become operative until July. That creates a transition issue requiring clarification about how providers can obtain the new license or rely on the exception during the intervening period. Companies should account for transactions entered into beginning in January 2028 in their implementation planning, rather than assume everything can wait until July.

Licensing Is Only Part of the Compliance Work

AB 2116 also restricts contract terms. A provider or broker may not take a confession of judgment or power of attorney “at any time before a default,” and may not include a provision that restricts the recipient from “disclosing information” about its dealings with the provider, including the provider’s terms. A transaction found unconscionable under Civil Code section 1670.5 violates the Financing Law. The statute prohibits unlawful, unfair, deceptive, or abusive acts and practices, requires brokers to display on their websites the average and maximum annual percentage rates for the financing transactions they facilitated in the most recent calendar year, and requires providers to file annual reports, the first due March 15, 2029. It also adds a mandatory ground for license suspension or revocation when a provider repeatedly fails to consider whether the recipient can repay the financing “in the time and manner provided” or “refinance” it “at maturity.”

Recommended Next Steps for Affected Companies

Affected companies should begin by identifying which products, transactions, and entities require a license and which may fit within an exemption, then review the contracts, underwriting practices, and reporting processes that support those activities. Bank-partnership programs should separately

identify who presents offers, handles sensitive applicant information, and communicates approval decisions, since those activities can trigger provider or broker licensing requirements. Existing California Financing Law licensees should also confirm whether their current licenses will authorize the newly regulated activities or require an update.

Bank partners, purchasers, and secured lenders should also address the provider's licensing status in their diligence and contractual protections. The objective is to resolve these questions before a licensing issue becomes a collection problem.

Contact Us

If you have questions about AB 2116 or how the new commercial financing licensing requirements may affect your organization, please contact Chris Friedman, Alex McFall, or your Husch Blackwell attorney.

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