

ASSEMBLY THIRD READING
 AB 3207 (Limón)
 As Amended May 29, 2018
 Majority vote

Committee	Votes	Ayes	Noes
Privacy	7-3	Chau, Berman, Calderon, Irwin, Mullin, Reyes, Ting	Kiley, Baker, Obernolte
Banking	8-2	Limón, Burke, Calderon, Cervantes, Gonzalez Fletcher, Grayson, Mark Stone, Weber	Acosta, Choi
Appropriations	12-4	Gonzalez Fletcher, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Friedman, Eduardo Garcia, Nazarian, Quirk, Reyes	Bigelow, Fong, Gallagher, Obernolte

SUMMARY: This bill revises the definition of "broker" under California Financing Law (CFL) and adds additional requirements for lenders when using a broker. Specifically, **this bill:**

- 1) Defines a broker to be any person who negotiates or performs specified actions in connection with loans made by a finance lender, including transmitting confidential data, as defined, about a borrower to a finance lender with the expectation of compensation (except in specified cases when a licensed lender transmits confidential data to another licensed lender) or participating in any loan negotiation between a finance lender and borrower.
- 2) Prohibits a lender from: compensating a person who is engaging in brokering activities without a license; compensating a broker for specified activities when the lender knows the broker has committed certain violations, including making a false statement or committed fraud; and charging a borrower more for the loan than the lender would have charged the borrower if the lender did not pay a referral fee.
- 3) Requires a lender to provide a borrower a written disclosure that shows the amounts paid to any broker in connection with the loan, among other information.
- 4) Requires a licensed broker who compensates an unlicensed person for a referral to develop, implement, and enforce policies and procedures related to business practices and activities prohibited for that person if they were a licensed broker.

FISCAL EFFECT: Additional ongoing administrative and enforcement costs to the Department of Business Oversight (DBO) in excess of \$250,000. Additional enforcement staff may be needed as a result of the expanded universe of possible CFL licensees and the additional requirements around information accessibility and brokering activities. These costs may be offset by fees paid by licensees.

COMMENTS: Under existing law, a CFL lender is prohibited from paying any compensation to an unlicensed person or company for soliciting or accepting applications loans. This prohibition does not apply to an employee, a real estate broker, or to compensation paid for by

any brokerage service provided by a bank or other financial institution not part of the CFL. There are some limited exceptions to this prohibition. First, CFL lenders that make commercial loans may compensate unlicensed persons in connection with the referral of one or more prospective borrowers, but only when certain conditions occur. Second, lenders participating in the Pilot Program for Increased Access to Responsible Small-Dollar Loans may use the services of one or more "finders" who are authorized under the program.

Many of CFL's provisions were drafted decades before the internet was developed. In recent years, consumers looking for personal loans have increasingly used the Internet to search for lenders, and companies have developed online lead generation practices to respond to this consumer demand. While lead generators can serve a valuable role in the market by lowering search costs for consumers and by providing value information to consumers, there remain significant consumer protection concerns around these modern practices. As the Assembly Committee on Banking and Finance notes, lead generators get paid whether or not a consumer is placed in a loan that fits their needs and that they have the ability to repay. This transactional nature of the relationship between consumers and lead generators poses significant consumer protection risks.

According to the author, this bill will address the issue of unlicensed third parties that solicit confidential information from consumers and provide this information to lenders. The author asserts this bill will require the licensure of lead generators that serve the nonbank lending market, such as CFL lenders.

In support, a coalition of consumer advocates, including the Western Center on Law and Poverty, Consumers Union, and the Center for Responsible Lending write:

This bill would require online lead generators to be licensed as brokers under the CFL if they provide confidential consumer data to finance lenders for compensation. The requirement for licensure gives DBO authority to conduct background checks on the owners and officers of lead generation firms and gives DBO access to examine the business records of these companies. The bill would also require that lead generators and finance lenders provide disclosures to consumers about how lead generators are compensated for providing leads.

Additionally, finance lenders would not be allowed to compensate unlicensed entities for lead generation services.

The requirements imposed by AB 3207 will give DBO, finance lenders, and consumers a clear picture of who can legally provide lead generation services and how those firms are conducting their business. The bill would bar lead generators from conducting any unlawful, unfair, or fraudulent business practice or from conducting any unfair, deceptive, false, or misleading advertising. And if companies violate any of the laws, DBO can suspend or revoke their license, cutting them off from receiving compensation from licensed finance lenders.

Recent amendments which provide that provisions of the CFL should not be interpreted to impose licensing or regulatory obligations on federally recognized Indian tribes or business entities that are considered "arms of the tribe," as specified, removed the opposition of the Habematolel Pomo of Upper Lake.

The Electronic Transactions Association (ETA) opposes this bill unless amended to address specific concerns. At the time of this writing it appears as though some concerns expressed in their letter have been addressed by amendments. ETA writes that they continue to have "significant concerns with a number of specific provisions of this bill as written and [look] forward to working with Assembly Member Limon and the committee on this important issue."

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