

Governor Brown Signs SB CA 1235

In July, CFA published a notice informing members to be aware of proposed legislation pending before the California legislature imposing new and potentially challenging disclosure requirements on certain commercial financing transactions in California. Despite months of lobbying against the bill by CFA and other interested parties, Governor Brown signed the bill into law on September 30.

CFA engaged a legislative advocate in July and, in conjunction with members representing our varied membership and our California Chapters, we held conversations with the sponsoring Senator's chief of staff and submitted proposed amendments in an attempt to achieve the best possible outcome for our members.

While our discussions with the Senator's chief of staff were successful in amending the bill to distinguish ABL and factoring from other commercial transactions that should require differentiated treatment, our proposed amendments outlining such differentiated treatment were not included in the final legislation and instead the work of creating specific regulations and compliance requirements for our industry was deferred to the CA Department of Business Oversight. The good news is such drafting may take up to a year to complete and is subject to public comment and review, allowing us to further champion our desired outcomes. Lenders are not required to comply with the Bill until the regulations from the DBO are completed.

Please see below for a rundown of the bill, including some of the most challenging aspects of the Bill for our industry. For the full text of the Bill:

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1235

Take special note of section 22803(a)

- CA SB 1235 was introduced in February 2018 by Senator Steve Glazer –

Democrat from Orinda. The bill imposes disclosure requirements on certain commercial loans allowing small business borrowers to determine the true cost of the facility and make it easier for borrowers to compare any financing offer, regardless of financial product, and understand the true cost of borrowing.

- In practice, SB 1235 will do exactly the opposite by creating a requirement for all lenders to provide a standardized disclosure to potential borrowers with estimated financial information that, depending on the product, could be vastly different than the real financial details of a loan.
- SB 1235 impacts both Asset-Based Loans and Factoring. While it does not apply to depository institutions, the ABL/factoring arms of depository institutions, depending on their affiliation with the bank, *may not be exempt*.
- The new disclosures require the lender for any proposal less than \$500,000 to provide the potential borrower an example of a transaction that includes the following information:
 - The Amount Financed
 - Total Dollar Cost
 - The Loan Term or Estimated Return
 - The Method, Frequency, and Amount of Payments
 - Description of Prepayment Policies
 - The Total Cost of the Financing Expressed as an Annual Rate (APR)
- It will be impossible to asset-based lenders and factors to comply with APR and Total Dollar Cost disclosures due to the numerous variables that impact such calculations.
- SB 1235 directs the Department of Business Oversight to promulgate regulations

dictating that lenders provide a borrower with an example of a transaction that could occur for a given amount of accounts receivable.

- Required APR and Total Dollar Cost disclosures will require numerous assumptions to be made which, if they turn out to be incorrect assumptions, could open the lenders and factors to eventual litigation. The impact will be to further limit lending and the availability of credit to small businesses in California.
- SB 1235 will only create confusion to the borrower since the example will be vastly different than the financial realities of the loan. At best it won't give the borrowers any useful information regarding the loan they are considering and could give them such erroneous detailed information that it only makes the entire process more confusing.
- The outcome of this legislation could place many California businesses at risk and jeopardize thousands of jobs by restricting their access to capital in the event the applicable lenders choose to not lend in California to avoid this law.

Members are urged to discuss the Bill and its possible ramifications with their legal counsel.

