Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
AB 642 (Limón) – As Introduced February 15, 2019

SUBJECT: California Financing Law

SUMMARY: This bill would modify the definition of a broker under the California Financing Law (CFL) and modify the rules applicable to finance brokers and to finance lenders that use the services of brokers, as specified. This bill would also require the Department of Business (DBO) to examine the CFL licensees at least once every 48 months. Specifically, **this bill would**:

1) Redefine broker, for the purposes of the CFL, to mean any person who is engaged in the business of performing any of the following acts in connection with loans made by a finance lender, except as otherwise exempted under the CFL:

    - Transmitting confidential data about a prospective borrower to a finance lender with the expectation of compensation, in connection with making a referral, as specified, subject to certain exemptions.

    - Making a referral to a finance lender under an agreement with the finance lender that a prospective borrower referred by the person to the finance lender meet certain criteria involving confidential data and with the expectation that the person making the referral will receive any compensation that is contingent upon whether the finance lender and the prospective borrower enter into a loan agreement, as specified, subject to certain exemptions.

    - Participating in any loan negotiation between a finance lender and prospective borrower.

    - Counseling, advising, or making recommendations to a prospective borrower about a loan based on the prospective borrower's confidential data.

    - Participating in the preparation of any loan documents, including loan applications, other than providing a prospective borrower blank copies of loan documents. Transmitting information that is not confidential data to a finance lender at the request of a prospective borrower shall not, by itself, constitute participation in the preparation of loan documents within the meaning of this paragraph.

    - Communicating to a prospective borrower a finance lender's loan approval decisions.

    - Charging a fee to a prospective borrower for any services related to a prospective borrower's application for a loan from a finance lender.

2) Provide that a person shall not be deemed a broker if:

    - The person distributes or otherwise disseminates to a prospective borrower a finance lender's marketing materials or factual information about the finance lender, its lending activities, or its loan products, such as the finance lender's interest rates, minimum or

maximum loan amounts or loan periods, or a general description of the finance lender's underwriting criteria; and,

- The person does not perform any of the acts specified in #1, above.

3) Provide that the following acts are not acts of a broker:

   - Administrative or clerical tasks in support of the performance by a licensed broker, as specified.

   - The furnishing of a consumer report to a licensee by a consumer reporting agency, as specified.

   - The furnishing of a prequalifying report, as defined, to a licensee by a consumer credit reporting agency.

   - Performing any of the acts described in #1, above, in connection with a loan made, or to be made, by a person not required to be licensed as a finance lender, as specified.

4) Define various terms for the purposes of the CFL, including: "express consent," "referral," and "clear and conspicuous." This bill would define "confidential data" to include, among other things: a bank account number or statement; a credit or debit card account number; a credit score whether self-reported or from a consumer credit reporting agency; a social security number or partial social security number; personal or business income information; a government-issued identification number; personal employment data or history; birthdate; mother's maiden name; medical information; health insurance information; an insurance policy number; and a taxpayer or employer identification number.

5) Exempt the following from the definition of confidential data: a prospective borrower's name; phone number; physical address; email address; desired loan or financing amount; stated purpose for a loan; self-reported range of credit scores or range of incomes; information that is knowingly made publicly available by a prospective borrower.

6) Provide that nothing in the CFL shall be interpreted to alter federal and state law governing tribal sovereign immunity.

7) Prohibit a finance lender from compensating a person conducting brokering acts unless that person is licensed as a broker, prohibit a finance lender from compensating a broker who has violated the CFL, and prohibit a finance lender from passing through additional fees attributable to a referral fee, as specified.

8) Require licensed brokers to obtain a prospective borrower's express consent prior to conducting any brokering acts, as provided. A broker would be deemed in compliance with that provision if it obtained the consent of the prospective borrower, prior to the operative date of this bill, and that consent was not revoked.

9) In the event that a licensed finance lender uses the services of a licensed broker, require the licensed finance lender to make specified disclosures to prospective borrowers prior to the borrower being obligated on the loan, including:

- The name and license number of the broker who referred the prospective borrower.

- That the finance lender may pay a fee to the broker, and an affirmation that lender will not pass that fee through to the borrower, as specified.

- An affirmation that the prospective borrower should not be charged a fee by the broker, and an affirmation that the finance lender (not the broker) is the party authorized to make the loan.

- A statement substantially similar to the following: "If you wish to report a complaint about the manner in which you were referred to us, you may contact the Department of Business Oversight at 866-275-2677 or file a complaint online at www.dbo.ca.gov."

10) Prior to engaging in any brokering acts, as provided, require licensed brokers to provide prospective borrowers specified disclosures in a clear and conspicuous manner, including, among other things:

    - The name and license number of each finance lender to whom the prospective borrower may be referred by the licensed broker, and the name and contract information for each person who is not a finance lender to whom the prospective borrower may be referred by the licensed broker.

    - Whether the compensation to be paid by each finance lender to whom the prospective borrower may be referred is contingent on the making of a loan to the prospective borrower and whether the compensation varies based on the principal amount of the loan or the charges provided by the loan agreement.

    - That lenders to whom the prospective borrower is referred are not necessarily the best lending options available to the prospective borrower.

    - That lenders to whom the prospective borrower is referred may separately contact the prospective borrower, as specified.

    - A statement substantially similar to the following: "If you wish to report a complaint about the services of any entity with which you interacted in connection with this loan, you may contact the Department of Business Oversight at 866-275-2677 or file a complaint online at www.dbo.ca.gov."

11) Require a licensed broker to obtain both the prospective borrower's acknowledgement that they received the required disclosures, and the prospective borrower's express consent to engage in brokering acts, as specified.

12) Require a licensed broker who compensates unlicensed persons for referrals to develop, maintain, and implement policies and procedures intended to:

    - Identify and correct the business practices of unlicensed persons that violate the provisions of this bill.

    - Ensure that the licensed broker receives and monitors complaints by prospective borrowers regarding those unlicensed persons.

- Ensure that the unlicensed person who collects confidential data from a prospective borrower provides the prospective borrower a disclosure that includes the following, among other things:

    - An explanation of the process for how a prospective borrower's confidential data may be viewed by, used by, or transferred between other unlicensed persons and that the confidential data may be provided to a licensed broker for the purpose of making a referral to a finance lender.

    - An explanation of how the unlicensed person and other unlicensed persons that may view, use, or transfer the prospective borrower's confidential data to identify a finance lender that may offer a loan to the prospective borrower.

- Ensure that those unlicensed persons shall not collect confidential data from a prospective borrower without first obtaining the prospective borrower's express consent for that purpose, as specified.

- Ensure that the licensed broker does not pay compensation to any of those unlicensed persons for referrals made in a manner that would have violated the provisions of the bill if the licensed broker had made the referral to a finance lender.

13) Prohibit a licensed broker from engaging in a business relationship with an unlicensed person who demonstrates repeated, uncorrected failures to adhere to the broker's policies and procedures, and specify that a licensed broker is not in violation solely for the reason that an unlicensed person commits isolated acts that are in violation of this division.

14) Require licensed brokers to conspicuously post the required policies and procedures in the place of business authorized by the broker's license. If a licensed broker conducts licensed activity on an internet website, the licensed broker must conspicuously post the policies and procedures on the internet website.

15) Require a licensed broker who compensates unlicensed person to maintain books and records documenting the identities of both of the following: (1) all unlicensed persons the broker compensates for referrals; and, (2) all unlicensed persons with whom the broker severs a business relationship due to the repeated, uncorrected failure of the unlicensed person to adhere to the broker's policies and procedures.

16) Authorize licensed finance lenders to pay compensation to unlicensed persons for commercial loans, as specified. Provides that unlicensed persons may perform brokering activities, as defined, so long as they engage in those activities in connection with five or fewer commercial loans in a calendar year.

17) Require the commissioner of the DBO to, at least once every 48 months, examine the affairs of each finance lender, broker, or program administrator licensee for compliance with this division. The commissioner may examine the books, accounts, records, and files used in the business of every person engaged in the business of a finance lender, broker, or program administrator, and may cooperate with any agency of the state or federal government.

18) Require the commissioner, after conducting the examination, require the commissioner to prepare a written statement of the findings of the examination, issue a copy of that statement to each licensee's principals, officers, or directors, and take appropriate steps to ensure correction of any violations.

EXISTING LAW:

1) Defines a broker, pursuant to the CFL, as any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender. (Fin. Code Sec. 22004.) Provides that no person shall engage in the business of a finance broker without obtaining a license from the commissioner. (Fin. Code Sec. 22100.)

2) Prohibits a finance lender from paying any compensation to an unlicensed person or company for soliciting or accepting applications for loans. This prohibition does not apply to the payment of compensation to an employee of the lender, a real estate broker, or to compensation paid for any brokerage service provided by a bank, savings and loan association, or other financial institution that is exempted from the CFL. (10 C.C.R. Sec. 1451.)

3) Contains two limited exceptions to the prohibition against compensating unlicensed persons in connection with the solicitation or acceptance of applications for loans:

   - Lenders accepted to participate in the Pilot Program for Increased Access to Responsible Small-Dollar Loans (pilot program) may use the services of one or more finders, as defined. Finders authorized under the pilot program need not be licensed, if they engage in one or more of eight activities that generally involve helping borrowers fill out loan applications and communicating with lenders about the status of and final decision on borrowers' loan applications. Pilot program finders may also engage in one or more of three additional activities (disbursing loan proceeds, accepting loan payments, and providing borrower disclosures) if they hold specified licenses. The ability of pilot program lenders to compensate finders is subject to several limitations. The commissioner has examination and disciplinary authority over pilot program finders. (Fin. Code Secs. 22371 – 22376.)

   - CFL licensees that make commercial loans may compensate unlicensed persons in connection with the referral of one or more prospective borrowers, when all of the following occur: the referral leads to a consummated loan, the loan contract provides for an annual percentage rate that does not exceed 36%, the licensee follows specified requirements when underwriting the loan, the licensee maintains records of all compensation paid to unlicensed persons, and the licensee annually submits information to the commissioner. Unlicensed persons that receive compensation may not engage in one or more of eight specific activities involving loans, except as specified. (Fin. Code Sec. 22602.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Purpose of the bill**: This bill seeks to require lead generators to be licensed as brokers under the CFL. This is an author-sponsored bill.

2) **Author's statement**: According to the author:

> The definition of "broker" under the CFL is vague, circular, and confusing. The current definition has led to confusion on behalf of lenders regarding which third-parties they can partner with to arrange loans and the allowable activities of unlicensed third parties. Additionally, the Department of Business Oversight has dozens of unresolved cases related to unlicensed brokering activities. All stakeholders – lenders, brokers, unlicensed third parties, borrowers, and the regulator – will be better served with a clear definition of the activities that require a broker license under the CFL.
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> There are currently unlicensed third parties (aka lead generators) that solicit confidential financial information from consumers and provide this information to lenders. These third parties provide advice or recommendations to consumers that may not be in the best interest of the consumer. For example, an unlicensed third party may steer consumers into loans with higher costs because the lender is willing to pay the third party more than a lender with lower cost loans for the referral.

3) **Background**: The CFL was written long before the internet was developed. For that reason, the law is silent on several activities that are common in today's consumer and business lending marketplaces, including the act of introducing prospective borrowers to prospective lenders online, without helping to negotiate the terms of the loan. The persons who perform these introductions are known as "finders" or "lead generators."

   Lead generation websites are increasingly common. Consumers can use these platforms to quickly and easily shop for hotels, cars, home repair, etc. In the financial lead generation context, lead generators collect information from consumers and small businesses seeking loans and sell that information to lenders seeking to extend credit to these groups. Lead generators can benefit both borrowers and lenders. Borrowers who use lead generators to help them obtain loans can often compare different lenders and loan terms, before selecting the combination in which they are most interested. Lenders can use lead generators to cost-effectively and efficiently identify prospective borrowers who are interested in and eligible for the loans they are offering. Lead generation, therefore, seems more akin to a marketing tool than traditional brokering. Lenders, who do not specialize in marketing, are increasingly turning to the targeted, and more efficient advertising methods employed by lead generators.

   However, as described in more detail below, lead generation can also be performed in ways that have the potential to harm borrowers and prospective borrowers. Yet, despite these potential harms, California currently lacks a regulatory framework designed to protect persons who use lead generators to obtain installment loans. This bill proposes such a regulatory framework and proposes to give California's primary lending regulator, the Commissioner of Business Oversight, clear statutory authority to regulate the behavior of lead generators operating in California.

A coalition of consumer advocacy groups, including Consumer Reports and the California Low-Income Consumer Coalition write in support that "[o]ver the past several years, an ecosystem of online lead generators has emerged that connect prospective borrowers with lenders. Even though these companies act as intermediaries to bring borrowers and lenders together, existing law is not clear on whether these companies need to be licensed as brokers under the CFL. This lack of clarity has caused confusion among finance lenders about which third parties they can partner with while remaining compliant with the CFL. Given these companies' role in marketing to consumers - often, to draw them in to costly loans - it is crucial that we update the law to provide clearer oversight of lead generators' activities and obtain better data about industry trends."

In 2017, SB 297 (Dodd) was introduced to similarly address the issue of the definition of "broker" under CFL, and give the DBO the clear authority to regulate lead generators. That bill defined the terms "finance broker" and "finder" under the CFL; required finders to register with the DBO, provide specified disclosures, adhere to specified rules, and refrain from engaging in prohibited activity; and gave the Commissioner of DBO (commissioner) regulatory and enforcement authority over finders, as specified. That bill passed out of the Senate Banking and Financial Institutions Committee unanimously, but was ultimately placed on suspense in the Senate Appropriations Committee.

Last year, this Committee passed AB 3207 (Limón, 2018), which attempted to include both traditional brokers and lead generators under a single definition of "broker," despite lead generators being arguably distinct from traditional brokers in that lead generators do not have the authority to act on behalf of another person, and are paid by the lender, not the borrower. As discussed more below, this Committee's analysis of AB 3207 questioned whether regulating traditional brokers and lead generators under a single statute or framework may ultimately prove unworkable given their different functions, and urged the author to take into account the specific risks to consumers associated with lead generation, and tailor any regulations to mitigate those risks. AB 3207 was ultimately held on suspense in the Senate Appropriations Committee. This bill, AB 642, is substantially similar to AB 3207 in its final form last year.

On Deck Capital writes in support:

> OnDeck believes AB 642 will provide much needed clarity on the treatment of different referral relationships under California law. Currently, the absence of a clear definition of brokering activity under the [CFL], Cal. Fin. Code [Section] 22000 - 22780, has created uncertainty for commercial lenders and their business partners regarding what activities are permissible and/or subject to licensure in California. The CFL has failed to keep pace with technological innovations in online marketing, referral and brokering activities. Existing uncertainty as to how to apply the CFL to these new technologies and activities has created traps for unwary CFL licensees and, at the same time, made CFL licensure less attractive for prospective licensees. AB 642 would clarify the existing statutory ambiguity by expressly defining brokering activity and by setting clear standards for marketing and referral programs.
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> Specifically, AB 642 recognizes the important differences among conventional brokering activities where the broker actively manages the customer relationship, referral activities where the broker and the lender exchange confidential customer data, and passive referral

activities where the referral partner simply provides marketing information to potential borrowers along with a link to the lender's website. These activities present entirely different risks for small business borrowers, and the level of regulatory oversight should be calibrated to match those risks. We support the tailored regulatory approach taken in AB 642.

Achieving this balance is complicated given the diversity of referral models that exist, but AB 642 is a big step in the right direction. By providing clear distinctions among brokering and referral activities and allowing certain flexibility in the compensation arrangements permitted thereunder, AB 642 will provide greater legal certainty, create a more level playing field for existing CFL licensees, and open the door for more companies to explore licensure under the CFL.

4) **Consumer protections should be targeted to the risks associated with the practice of lead generation**: This bill would set out a framework for brokers (including lead generators under the bill) to follow when dealing with borrowers and potential borrowers under the CFL. Among other things, the bill would define a broker as a person who generally: (1) transmits confidential data about a prospective borrower to a finance lender; (2) makes a referral to a finance lender under an agreement with the finance lender based on that prospective borrower meeting certain criteria based on their confidential information; (3) participates in any loan negotiation between a finance lender and prospective borrower; (4) counsels, advises, or makes recommendations to a prospective borrower about a loan based on the prospective borrower's confidential data; (5) participates in the preparation of any loan documents, including loan applications; (6) communicates to a prospective borrower a finance lender's loan approval decisions; or, (7) charges a fee to a prospective borrower for any services related to a prospective borrower's application for a loan from a finance lenders.

   The bill would require that brokers obtain express consent prior to collecting or transferring a prospective borrower's confidential data and would require certain disclosures. As noted above, this Committee considered the question of how lead generators should be regulated in a way that would benefit consumers last year in its analysis of AB 3207. The Committee analysis noted:

   > Applied in the context of lead generation, while arguably not harmful or overly burdensome, [the requirements of AB 3207] fail to provide consumers with the information they would need to make a meaningful decision, and also fail to provide lead generators with certainty as to their actual practices.
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   > Accordingly, as this bill moves through the legislative process, the author may wish to consider what information and practices would be truly in the regulation of this particular industry, including: (1) how should lead generators vet their lenders; (2) should lead generators be required to disclose which lenders they work with; (3) is the data held by lead generators encrypted; (4) how long is borrower data retained; and (5) how many times is borrower data is being sold.

   AB 642 clearly addresses one of the considerations outlined by the Committee last year, in that this bill requires brokers (or lead generators) to disclose the specific finance lenders to whom the prospective borrower may be referred by the licensed broker. The bill also

requires other disclosures, designed to help the prospective borrower make informed choices, such as:

- That lenders to whom the prospective borrower is referred may separately contact the prospective borrower.

- That lenders to whom the prospective borrower is referred are not necessarily the best lending options available to the prospective borrower.

- The name and contract information for each person who is not a finance lender to whom the prospective borrower may be referred by the licensed broker.

- Whether the compensation paid by each finance lender may be contingent on the making of a loan and on the amount of the loan.

Jose Cisneros, Treasurer, City and County of San Francisco, writes in support:

> Currently, online lead generators entice largely low-income borrowers through ads that offer to provide a loan. It appears to consumers that this company will provide a loan, while the company is actually gathering personal information from consumers and then selling that information to fringe financial service companies who provide (often high-cost) consumer loans. This is both a lending problem and a privacy concerns. […]
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> AB 642 will protect borrowers from both potentially predatory practices by unlicensed lead generators and from having their private data shared with fringe financial lenders without their consent.

There is little debate that lead generators who fail to abide by best practices can cause real harm by connecting borrowers with unauthorized lenders, misusing borrower data, and otherwise misleading consumers. Both industry and consumer advocates express interest in the regulation of this field.

The question, however, is *how* to regulate this industry in a meaningful way that will ensure consumer protection and industry certainty. Lead generation involves many different actions by many different participants. To be effective and helpful to consumers, any regulatory scheme will have to recognize that complexity and account for it. Given that a number of the privacy considerations raised by this Committee with respect to AB 3207 remain at issue in this bill, were not addressed in the subsequent amendments of AB 3207, this author may wish to consider requiring regulations that would protect against the specific risks of lead generation—namely, directing prospective borrowers to loans with unfavorable terms (or scams, for that matter), and the future brokering of prospective borrowers' personal information. Specifically, the author may wish to require the following amendments as the bill moves through the legislative process:

- Require brokers/lead generators to vet the lenders they work with, and establish minimum standards for those lenders.

- Require brokers/lead generators to encrypt prospective borrower data and delete it after a certain period of time.

- Prohibit brokers/lead generators from selling the personal information of prospective borrowers.

5) **Bill could arguably result in inconsistent treatment of brokers under CFL**: This bill modifies the regulatory framework for brokers and finance lenders under the CFL, but the drafting of some of the bill's provisions would arguably create uncertainty as to what actions are permitted by brokers, which could lead to unequal or disproportionate enforcement. Such uncertainty may also have the unintended consequence of forcing lead generators to question whether it would be better to risk the repercussions associated with not being licensed, rather than be subject to unpredictable enforcement actions by the licensing body. Specifically, the definition of confidential information provided by this bill is unclear, the bill (in part) allows the DBO to choose what is an actionable violation, and the bill seeks to regulate unlicensed persons through mandatory policies of licensed brokers.

a. Definition of confidential information

This bill defines confidential data to include, among other things: a bank account number or statement; a credit or debit card account number; a credit score whether self-reported or received from a consumer credit reporting agency; a social security number or partial social security number; personal or business income information; a government-issued identification number; personal employment data or history; birthdate; mother's maiden name; medical information; health insurance information; an insurance policy number; and a taxpayer or employer identification number.

The bill then exempts a number of items from the definition of confidential data including, among other things, a prospective borrower's name, phone number, physical address, and email address. While the under-regulated selling of these types of personal information is concerning, of particular concern, is that the bill provides that desired loan or financing amount, stated purpose for a loan, and self-reported range of credit scores or range of incomes are *not* confidential information. This creates patent ambiguities between what the bill defines as confidential information, and what would be excluded from that definition.

For example, it is difficult to parse out how a "range of income" is distinguishable from "income information," with the latter being deemed confidential under the bill and the former not. Similarly, it is not clear how a credit score would be considered confidential information, but the range of prospective borrower's credit score would not be, given that credit scores all come from the same place, a consumer credit reporting agency. The bill also provides that "[i]nformation that is knowingly made publicly available by a prospective borrower" is not confidential data, which could arguably mean that anything a borrower posts on social media *(e.g.*, Linkedin or Facebook) would then not be confidential information.

Additionally, in listing what is *not* confidential information, this bill would allow lead generators to continue selling large amounts of personal information without obtaining a prospective borrower's consent. For example, a lead generator could sell an individual's name, address, phone number, how much of a loan they were seeking, for what purpose they were seeking the loan, any publicly available information about the prospective borrower's business, and any information the prospective borrower publicly displayed (such as a birthdate and employment history). This is inconsistent with other definitions of "personal information" under various laws in California, which protect names, addresses, phone numbers, employment information, and even email addresses (*see e.g.,* Civ. Code Secs.

1798.3 and 1798.140.). It is unclear what, if any, protection this bill's definition of "confidential information" would afford borrowers or potential borrowers.

The author contends that it was necessary to include what information is *not* confidential data to ensure that individuals who are not engaging in brokering activities would not be regulated under the bill. Unfortunately, as drafted, the bill may still apply to individuals outside the lead generation industry, while simultaneously failing to capture the individuals the bill was designed to target. As such, the author has accepted the following amendment limiting the definition of "confidential data" to the information that lead generators *actually* send to lenders, to ensure that the provisions of the bill will be applied to the industry the author seeks to regulate.

Author's amendment:

Page 7, line 7, strike "the following" and insert "any of the following"

Page 7, lines 12-14, strike "either self-reported by the person it relates to, or received from a credit reporting agency as part of an official request."

Page 7, strike lines 19-25.

Page 7, strike lines 27-40.

Page 8, strike lines 1-3.

Staff additionally notes that the types of information that are being removed from the definition of "confidential data" in the amendment, above, are included in other privacy laws, including in the California Consumer Privacy Act (CCPA), which gives consumers many new rights with regard to their PI. Accordingly, removing information such as government-issued identification numbers, personal employment data or history, medical information, and health insurance information from the definition of confidential data under this bill does not leave that information without protection. Lead generators would still be required to comply with the CCPA and other privacy laws, such as the Data Breach Notification law, the Confidentiality of Medical Information Act (CMIA), and the Insurance Information Privacy Protection Act (IIPPA).

b. Interactions with unlicensed persons

This bill would clearly prohibit a finance lender from compensating a person for brokering services if that person is not a licensed broker, and would prohibit a lender from compensating any licensed broker who is in violation of the CFL. The bill is less clear about how licensed brokers are permitted to engage with unlicensed persons. Specifically, the bill would require a licensed broker who compensates unlicensed persons for referrals to develop, maintain, and implement policies and procedures intended to:

- Identify and correct the business practices of unlicensed persons that violate the provisions of this bill.

- Ensure that the licensed broker receives and monitors complaints by prospective borrowers regarding those unlicensed persons.

- Ensure that the unlicensed person who collects confidential data from a prospective borrower provides the prospective borrower with specified disclosures and require the unlicensed person to obtain a prospective borrower's express consent.

- Ensure that the licensed broker does not pay compensation to any of those unlicensed persons for referrals made in a manner that would have violated the provisions of the bill if the licensed broker had made the referral to a finance lender.

While agreeing with the author's goal of better protecting consumers, the Online Lenders Alliance (OLA) is opposed to this bill as currently drafted because it fears that the bill could have unintended negative consequences on California Consumers. Specifically, OLA writes:

> OLA-member lead generators work with a broad range of vetted lenders that safely shepherd consumers to these lenders in real time and maximizes the likelihood that consumers will connect with true lenders safely, quickly, and conveniently in the privacy of their homes. Lead generators also act as a buffer from the thousands of dangerous and irreparable scams that infiltrate the Internet. Thus, since most consumers start their search for financial solutions online it is imperative that these consumers are effectively steered from scammers who are only interested in phishing, identity theft and other criminal acts. Moreover, scammers do not honor the law or industry best practices, cannot easily be found or brought to justice, are very sophisticated and often trap even knowledgeable consumers. Shepherding consumers from these charlatans is a primary issue.
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> […] OLA is concerned, in particular, that AB 642 requires disclosures and consent in a manner that severely disrupts the consumer experience, and it could potentially encourage consumers to use less cumbersome loan processes utilized by unlicensed lead generators, who often operate outside the U.S. without complying with any consumer protection laws. In the end, consumers will be exposed to more bad actors - thereby defeating the objective of increased consumer protection.
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> OLA-member lead generators are not opposed to regulatory oversight. AB 642 can and should be amended to achieve ***real*** consumer protection, with proper disclosures and informed consumer consent. (Emphasis in original.)

In particular, OLA requests that appropriate disclosures be given to, and consent obtained from, the consumer at the *beginning* of the consumer's engagement, rather than throughout the process. OLA also requests that disclosures and consent language are not required to be delivered in 10 point font, which they argue is a standard that does not translate well to mobile devices. Instead, OLA requests that the standard be "easily readable," which would allow for font sizes that are appropriate to the device being used by the consumer. OLA also asks for a process by which companies who are currently engaging in lead generation may obtain a license within a certain period of time without being denied a license on grounds that they were engaged in unlicensed activity prior to the enactment of AB 642.

The bill would additionally provide that a licensed broker shall not engage in a business relationship with an unlicensed person who demonstrates repeated, uncorrected failures to adhere to the broker's policies and procedures, but that a licensed broker is not in violation solely for the reason that an unlicensed person commits isolated acts that are in violation of this division.

These requirements raise a question as a matter of public policy: why not simply treat licensed brokers the same way the law treats licensed finance lenders, and prohibit them from engaging in brokering activity with unlicensed persons?

Additionally, the bill is ambiguous as to when a licensed broker would be in violation of these requirements based on the actions of an unlicensed business partner and become subject to an enforcement action by the DBO.

Interestingly, this bill would also require licensed brokers to maintain records documenting the identities of all unlicensed persons it compensates for referrals, and all unlicensed persons with whom the broker severs a business relationship due to the repeated, uncorrected failure of the unlicensed person to adhere to the broker's policies and procedures. Under this bill, these records shall be inspected by the commissioner at least once every 48 months, and as often as the commissioner deems necessary. Taken together, these provisions would create a list of unlicensed persons acting as brokers. While such a list may provide interesting information, it is arguably irrelevant to the DBO, who can only regulate licensed persons. Accordingly, the author may wish to consider if better consumer protection would be achieved by instead prohibiting licensed brokers from conducting businesses with unlicensed persons who are providing brokering services.

6) **Additional opposition arguments**: The Small Business Finance Association (SBFA) opposes this bill, and seeks amendments to exclude commercial products. SBFA specifically argues that AB 642 is in conflict with SB 1235 (Glazer, Ch. 1011, Stats. 2018) which required providers of commercial financing to provide disclosures about the cost of that financing to the recipients of the financing, as specified.

   The Habematolel Pomo of Upper Lake and the Guidiville Ban of Pomo Indians also write in opposition that this "measure poses a threat to tribal sovereignty and could undermine legitimate tribal lending businesses" and requests that the following language replace the current language in the bill regarding tribal sovereignty:

   > Section 22051.5 is added to the Financial Code: *This division does not apply to any sovereign entity or to any transaction entered into by that sovereign entity.*

7) **Prior legislation**: AB 3207 (Limón, 2018) *See* Comment 3.

   AB 1253 (Glazer, Ch. 1011, Stats. 2018) *See* Comment 6.

   SB 297 (Dodd, 2017) *See* Comment 3.

   AB 784 (Dababneh, 2017) would have expanded the pilot program under CFL to include loans of up to $5,000, rename finders as referral partners when used in connection with pilot program loans, allow for the use of online referral partners, and provide greater flexibility to pilot program lenders with respect to their compensation of finders.

   SB 235 (Block, Ch. 505, Stats. 2015) increased the types of activities in which pilot program finders may engage and provided greater flexibility to pilot program lenders with respect to their compensation of finders.

SB 197 (Block, Ch. 761, Stats. 2015) authorized the payment of referral fees to unlicensed persons in connection with commercial loans made under the CFLL, subject to several limitations specified in the bill.

8) **Double-referral**: This bill was double-referred to the Assembly Committee on Banking and Finance, where it was heard on April 1, 2019, and passed on a 9 - 3 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association for Micro Enterprise Opportunity
California League of United Latin American Citizens
California Low-Income Consumer Coalition
Jose Cisnereos, Treasurer, City and County of San Francisco
Consumers for Auto Reliability & Safety
Consumer Reports
Housing & Economic Rights Advocates
On Deck Capital

Opposition

California Financial Service Providers
Curo Financial Technologies Corp.
Dot818, LLC
Habematolel Pomo of Upper Lake (unless amended)
Guidiville Ban of Pomo Indians (unless amended)
Online Lenders Alliance
Scotts Valley Band of Pomo Indians
Small Business Finance Association (unless amended)
Stop Go Networks Ltd.

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