

Code: Section: [Up^](#)[Add To My Favorites](#)**CIVIL CODE - CIV****DIVISION 3. OBLIGATIONS [1427 - 3273.69]** (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)**PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69]** (*Part 4 enacted 1872.*)**TITLE 1.90. Commercial Financing Transactions with Small Businesses [1799.300 - 1799.304]** (*Title 1.90 added by Stats. 2023, Ch. 881, Sec. 1.*)**1799.300.** For purposes of this title, the following definitions apply:

(a) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and authorizes an electronic transfer of funds between these banks or bank accounts.

(b) (1) "Broker" means a person who is engaged in the business of performing any of the following acts in connection with commercial financing made by a provider:

(A) Transmitting confidential data about a prospective recipient to a provider with the expectation of compensation in connection with making a referral.

(B) Making a referral to a provider under an agreement with the provider that a prospective recipient referred by the person to the provider meet certain criteria involving confidential data.

(C) Participating in a negotiation of commercial financing between a provider and prospective recipient.

(D) Counseling, advising, or making recommendations to a prospective recipient about a commercial financing transaction based on the prospective recipient's confidential data.

(E) (i) Participating in the preparation of any commercial financing documents, including, but not limited to, commercial financing applications, other than providing a prospective recipient blank copies of commercial financing documents.

(ii) Notwithstanding clause (i), transmitting information that is not confidential data to a provider at the request of a prospective recipient shall not, by itself, constitute participation in the preparation of commercial financing documents.

(F) Communicating to a prospective recipient a provider's approval decisions related to a commercial financing transaction.

(G) Charging a fee to a prospective recipient for any services related to a prospective recipient's application for a commercial financing transaction from a provider.

(2) Notwithstanding paragraph (1), a person is not a "broker" under this title solely because they take any of the following acts:

(A) Performing support tasks, including, but not limited to, typing, word processing, data entry, filing, billing, answering phone calls, taking and receiving messages, and scheduling, in support of the performance by a broker of any of the activities described in subparagraphs (E) to (G), inclusive, of paragraph (1).

(B) Furnishing a consumer report to a covered entity by a consumer reporting agency in accordance with subsection (a) or (c) of Section 1681b of Title 15 of the United States Code.

(C) Furnishing a consumer credit report, as defined in Section 1785.3, to a covered entity by a consumer credit reporting agency in accordance with subdivision (a) or paragraph (1) of subdivision (b) of Section 1785.11.

(D) Furnishing a prequalifying report, as defined in Section 1785.3, to a covered entity by a consumer credit reporting agency in accordance with paragraph (2) of subdivision (b) of Section 1785.11.

(E) Distributing or disseminating to a prospective recipient of a provider's marketing materials or factual information about the 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.

(c) "Commercial financing" has the same meaning as defined in Section 22800 of the Financial Code.

(d) "Confidential data" means any of the following:

- (1) A bank account number.
- (2) A bank statement.
- (3) A credit or debit card account number.
- (4) A credit score, as defined in Section 1785.15.1.
- (5) All or a portion of a social security number.
- (6) Personal or business income information, including information self-reported by the person.
- (7) A taxpayer or employer identification number.

(e) "Covered entity" means either of the following:

- (1) A provider.
- (2) A broker.

(f) "Depository institution" means any of the following:

- (1) A bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.
- (2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.
- (3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(g) "Provider" means a person who extends a specific offer of commercial financing to a recipient, including, but not limited to, a nondepository institution that enters into a written agreement with a depository institution 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. The fact that a provider extends a specific offer of commercial financing or lending on behalf of a depository institution shall not be construed to mean that the provider engaged in lending or originated that loan or financing.

(h) "Recipient" means a person who is presented a specific commercial financing offer by a provider that is equal to or less than five hundred thousand dollars (\$500,000).

(i) "Referral" means the introduction of a prospective recipient to a provider or the delivery of a prospective recipient's contact information to a provider for the purpose of making an introduction.

(j) "Small business" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years.

(Added by Stats. 2023, Ch. 881, Sec. 1. (SB 666) Effective January 1, 2024.)

1799.301. This title does not apply to any of the following:

- (a) A provider that is a depository institution.
- (b) A provider that is a lender regulated under the federal Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.).
- (c) A commercial financing transaction secured by real property.
- (d) A person who makes no more than one commercial financing transaction in California in a 12-month period.
- (e) A person who makes five or fewer commercial financing transactions in California in a 12-month period that are incidental to the business of that person.

(f) A commercial financing transaction in which the recipient is a dealer, as defined by Section 285 of the Vehicle Code, or an affiliate of the dealer, pursuant to a specific commercial financing offer or commercial open-end credit plan of at least fifty thousand dollars (\$50,000), including, but not limited to, a commercial loan made pursuant to that commercial financing transaction.

(g) A commercial financing transaction in which the recipient is a vehicle rental company, or an affiliate of the vehicle rental company, pursuant to a specific commercial financing offer or commercial open-end credit plan of at least fifty thousand dollars (\$50,000), including, but not limited to, a commercial loan made pursuant to that commercial financing transaction.

(Added by Stats. 2023, Ch. 881, Sec. 1. (SB 666) Effective January 1, 2024.)

1799.302. A covered entity shall not charge any of the following in connection with a commercial financing transaction with a small business or small business owner:

(a) A fee for accepting or processing a payment required by the terms of the commercial financing contract as an automated clearinghouse transfer debit, except for a fee imposed for a payment by an automated clearinghouse transfer that fails because of insufficient funds in the transferor's account.

(b) A fee for providing a small business with documentation prepared by the covered entity that contains a statement of the amount due to satisfy the remaining amount owed, including, but not limited to, interest accrued to the date the statement is prepared and a means of calculating per diem interest accruing thereafter.

(c) A fee in addition to an origination fee that does not have a clear corresponding service provided for the fee, including, but not limited to, a risk assessment, due diligence, or platform fee.

(d) (1) A fee for monitoring the small business' collateral.

(2) Paragraph (1) does not apply if any of the following are true:

(A) The commercial financing transaction is an asset-based loan or factoring, and the fee is intended to compensate the covered entity for actions taken to validate the collateral with the intended purpose of maximizing the amount of financing provided to the small business or small business owner under the financing contract pursuant to which the fee is charged.

(B) The fee is expressed as a dollar amount or a percentage of an identifiable base, and the fee is deemed a finance charge, as described in Section 943 of Subchapter 3 of Chapter 3 of Title 10 of the California Code of Regulations.

(C) The commercial financing transaction is delinquent for more than 60 days.

(e) A fee for filing or terminating a lien filed in accordance with the provisions of the Uniform Commercial Code against the business' assets that exceeds 150 percent of the cost of the filing or termination.

(Amended by Stats. 2024, Ch. 194, Sec. 1. (SB 1521) Effective January 1, 2025.)

1799.303. (a) If a covered entity violates Section 1799.302, the recipient shall be entitled to all of the following relief:

(1) Actual damages sustained as a result of the violation, including, but not limited to, the amount of fees paid by the recipient that are prohibited by Section 1799.302.

(2) Statutory damages of at least five hundred dollars (\$500) but not greater than two thousand five hundred dollars (\$2,500).

(3) Injunctive relief.

(4) Attorney's fees and costs.

(5) Any other relief that the court deems proper.

(b) A court may award a covered entity that is the prevailing party in an action brought pursuant to this section reasonable attorney's fees upon a finding that the recipient brought the action in bad faith.

(Added by Stats. 2023, Ch. 881, Sec. 1. (SB 666) Effective January 1, 2024.)

1799.304. A waiver of the provisions of this title is contrary to public policy and is void and unenforceable.

(Added by Stats. 2023, Ch. 881, Sec. 1. (SB 666) Effective January 1, 2024.)