

September 10, 2024

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: VETO REQUEST - SB 1286 (Min): Rosenthal: Small Business Debts

Dear Governor Newsom:

On behalf of the American Financial Services Association (AFSA), which is the primary trade association for the consumer credit industry, I write to inform you of AFSA's opposition to SB 1286 and to respectfully request that you veto this measure. As drafted, this measure will have an outsized impact on the automobile floorplan lending segment which could have easily been mitigated had the author agreed to any of our proposed clarifying changes.

Floorplan lenders are licensed by the state and provide floor plan financing to licensed motor vehicle dealers, who are sophisticated in lending due to their continual arrangement of financing for their own customers. Floorplan lenders provide financing through revolving or open-end credit lines allowing dealers to replenish their retail inventory as needed. Maintaining an open-ended line of credit allows dealers to borrow only when they purchase inventory and gives them the flexibility to repay their outstanding debt when their retail inventory is sold. As such, these types of loan products warrant constant communication by and among the floorplan lender, the dealer, and third parties to facilitate purchases, timely payment of loans when inventory is sold, and to ensure accurate tracking of the collateral. SB 1286 clearly hinders communication, thereby interfering with and negatively affecting the normally positive relationship between floorplan lenders and dealers.

Another fundamental problem with the bill is that the total value of credit is not clearly defined. 1788.2 (n)(1) states in part that the total value is the "*maximum amount that the creditor is contractually required to provide... or is the maximum amount that is enumerated in an open-end credit agreement.*" This may be appropriate for closed-end loans where the amount borrowed is capped at a specific amount by contract (ex: \$500,000), but under an enumerated \$100,000 open-end line of credit, the same dealer described above would continue to borrow and repay loans under the open-end line of credit and would typically borrow well over \$500,000 over the course of a year and much, much more over the life of the credit line.

To resolve this, we had requested clarifying language to provide that the total value is the amount actually borrowed over the life of the agreement, or pursuant to the contract, to no avail. It was suggested that floorplan lenders could just raise the maximum loan amount in the contract to account for this, but this concept is inherently flawed. It would be deceptive and irresponsible for lenders to artificially adjust a borrower's creditworthiness simply to avoid the provisions of

the bill, *e.g.* extending a \$600,000 line of credit to a borrower whose credit history warrants a \$100,000 line of credit. Clearly the actual value of an open-end credit line is substantially greater than the enumerated value.

The other substantial problem with the measure that the author refused to address is restricting the venue where judicial proceedings may be filed (1788.15). As you would anticipate, floorplan loans are collateralized by a dealer's inventory, so current practice is to file a proceeding where the collateral is located in order to make recovery easier. The measure however provides that the venue where a judicial proceeding may be filed must be where the person "is located," not necessarily where the collateral is located. While the proponents sought to make collateral recovery more difficult with this provision, the reality is that restricting collateral recovery will alter and restrict lending practices.

While Senator Min will not be in the Legislature next year, AFSA is prepared to work on a similar measure with a different author next year to ensure that the aforementioned items are addressed. In its current form however, AFSA respectfully requests that you veto this measure.

Sincerely,



Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association