

Date of Hearing: April 18, 2022

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 2380 (Maienschein) – As Introduced February 17, 2022

SUBJECT: Consumer loans

SUMMARY: Prohibits certain lenders from making a consumer loan to a borrower for the purpose of purchasing a dog or a cat if that loan is offered, arranged, or facilitated by a merchant or retailer.

Specifically, **this bill:**

- 1) Prohibits a California Financing Law (CFL) licensee from making a consumer loan to a borrower for the purpose of purchasing a dog or a cat if that loan is offered, arranged, or facilitated by a merchant or retailer.
- 2) States that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXISTING LAW:

- 1) The California Financing Law (Fin. Code Sec. 22000 et seq.) requires licensing and regulation of finance lenders and brokers making and brokering consumer and commercial loans, except as specified; prohibits misrepresentations, fraudulent and deceptive acts in connection with making and brokering of loans; and provides administrative, civil (injunction and ancillary relief) and criminal remedies for violations of the law.
- 2) Establishes the Fair Access to Credit Act and, among other provisions, authorizes a finance lender, with respect to a loan of a bona fide principal amount of \$2,500 or more but less than \$10,000 to contract for or to receive charges at a rate not exceeding an annual simple interest rate of 36% plus the Federal Funds Rate (Fin. Code Sec. 22304.5).

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) **Purpose.**

According to the author:

Adopting a pet can be an exciting time for many families. Once you see the face of the animal you wish to adopt, the excitement and connection can be hard to walk away from, even if the pet costs a significant amount of money. Unfortunately, many predatory lenders prey on this excitement and offer loans with extremely high interest rates and hidden fees. They rely on consumers not

reading the fine print or being so determined to take home the pet they have bonded with that they will sign anything. Often times consumers agree to loans they cannot financially support and the pet ends up suffering. AB 2380 helps families make smart financial decisions while searching for their new family pet.

2) **Evolving state policies regarding pet stores and sales.**

AB 2380 follows a number of Legislative efforts to curb the sale of commercially bred dogs, cats, and rabbits from so-called puppy mills or kitty factories. "Puppy Mills" or "Kitty Factories" are common terms for large commercial breeding facilities that mass produce animals for sale at retail markets. Mass produced, commercial animal breeders are typically scrutinized for their treatment of the animals including producing sick animals, inhumane treatment, and providing abhorrent living conditions.

In 2018, California enacted into law AB 485 (O'Donnell) Chapter 740, Statutes of 2017, which aimed to eliminate the sale of animals coming from puppy mills, by requiring commercial pet stores to exclusively sell dogs, cats, and rabbits that have been sourced from public animal control agency or shelter, animal rescue groups, and other specified organizations. However, following enactment of that bill, there were reports of commercial breeders fraudulently registering as non-profits to skirt pet sale laws. In response, the Legislature then passed AB 2152 (Gloria), Chapter 96, Statutes of 2020, which aims to end this practice by broadly prohibiting pet stores from adopting out, selling, or offering for sale a dog, cat, or rabbit.

Despite these robust rules against the sale of commercially-bred animals, California consumers are still able use a number of online retailers to order an animal and have the animal shipped to them.

3) **Financing the purchase of a pet**

Consumers purchasing dogs or cats online may be able to take advantage of a range of financing options, some of which are consumer loans with significant interest rates. It is unknown to what extent California-based purchasers are able to use these financing options, but the landscape of online pet merchants also seems to be in a constant state of change, making it difficult to keep track of how these operations are organized and how their partnerships with lending platforms or lenders work.

Recently, press reports have highlighted the trend of so-called "predatory puppy loans" with interest rates that exceed state interest rate caps. In one such case, the lending business EasyPay Finance works with Utah-based Transportation Alliance Bank to offer consumer loans with annual interest rates of more than 130%, utilizing what consumer groups describe as a "rent-a-bank" strategy to avoid state interest rate caps.¹ This ability to skirt interest rate caps – including those established in California by AB 539 (Limon), Chapter 708, Statutes of 2019 – through bank partnerships is the subject of significant debate and advocacy at the federal level, as well as litigation here in California. In March 2022, Opportunity Financial, LLC (OppFi) filed a complaint for declaratory and injunctive relief against DFPI, seeking to

¹ <https://www.cbsnews.com/news/puppies-predatory-loans-pet-stores-puppy-mills-easypay-tab-bank-fdic/>

block DFPI from enforcing rate cap laws for loans made through OppFi's partnership with a Utah-based bank.² This issue remains in flux and unresolved.

In addition to high-cost consumer loans offered through out-of-state banks, a number of other companies work with pet retailers to offer a range of pet financing options. For instance, Terrace Pets Financing offers up to \$12,750 in financing for pets and offers a variety of plans, such as loans and retail sales agreements. Terrace Pets offers these financing options through a number of lenders, with the stated goal of "helping customers and merchants navigate the world of financing with less hassle and more happy."³ In another example, Credova is a Buy Now, Pay Later service that partners with pet and pet supply stores to allow customers to purchase a pet via four equal installments.⁴ Credova is not yet available in California, nor does it have a CFL license.

Not all entities offering pet financing may need to be licensed under the CFL and thus may not be covered by AB 2380. For example, companies offering point-of-sale financing, a broad term applying to instances when shoppers pay for a purchase over time, may or may not require CFL licensure, depending on the nature of the financing. In 2019, DFPI (then called the Department of Business Oversight) concluded in an interpretive opinion that point-of-sale financing transactions may be deemed loans (which would then require CFL licensure) when the consumer, merchant, or third-party financier treat the transactions like loans, the relationship between the merchant and third-party financier is extensive, the transaction is not otherwise regulated, and the role of the third-party financier and all financing terms are not clearly disclosed to the consumer.⁵

It is unclear the extent to which these high-cost consumer loans or other pet financing options are available to California-based customers. Committee staff tried to go through the process of an online dog purchase in order to identify methods of payment, but was only allowed to use a credit card (committee staff did not go through with the purchase).

However, what *is* clear is that financial services companies, including some headquartered in California, market these financial products and their partnerships with online pet retailers. These financing partnerships enable online pet retailers to flourish and, by extension, allow commercially-bred dogs and cats to continue to be sold to Californians. Given the Legislature's efforts to halt the sale of commercially-bred dogs and cats, AB 2380's goals are reasonable, even if its impact is not yet fully known.

The Legislature has previously tried to curb the use of predatory and high-cost pet financing products. In response to the use of so-called "rent-to-own" financing schemes that allow the customer to lease the desired dog or cat by making monthly payments, the Legislature passed AB 1491 (Caballero), Chapter 761, Statutes of 2017, that declared as void against public policy these types of leasing contracts that do not immediately transfer ownership of the animal to the purchaser. As the author explains in their statement to the Assembly Judiciary Committee:

² <https://www.consumerfinancemonitor.com/2022/03/15/oppfi-files-complaint-to-block-true-lender-challenge-by-california-department-of-financial-protection-and-innovation/>

³ <https://terracepets.com/offer-financing/>

⁴ <https://credova.com/petpetsupply>

⁵ <https://dfpi.ca.gov/2019/12/30/dbo-denies-lending-license-sought-by-unregulated-point-of-sale-financer-and-issues-related-legal-opinion/>

[One] company partners with pet retailers to offer consumers puppy leasing options, akin to a “rent-to-own” scheme. The structure is much like a car lease, in which the consumer pays fixed monthly payments and is then given the opportunity to purchase the puppy, kitten, or other pet at the end of the term by making a balloon payment. At the end of the lease term, the lessee may have paid twice or even three times the amount of the initial cost that the pet otherwise would have cost. Unlike other common forms of financing, the company has structured the financing so that there are no restrictions on the fees or interest that are charged. Given the emotional nature of purchasing a new pet, families often do not take the time to fully understand the financial implications of the transaction. Once the true cost is realized, these families must decide if they can keep their new furry friends, or if they have to cancel their contract. In the event of a default or cancellation, the future welfare of the pet is put into question given that the lending company has no interest in maintaining the pet.

4) **Arguments in support.**

This bill is sponsored by the Animal Legal Defense Fund (ALDF), who writes:

While AB 485 (O’Donnell) passed in 2017, and subsequent legislation to close loopholes (AB 2445 and AB 2152) addressed puppy mill sales in retail stores, pet sales have subsequently shifted online. Predatory puppy financing often leads to financial hardship for borrowers due to undisclosed and often exorbitant interest rates and hidden fees. Such predatory loans provide outlets for puppy mills—commercial breeders who provide inadequate care—to unscrupulously sell dogs to consumers who might otherwise not be able to afford them. Financing also increases impulse puppy purchases, which can result in weeks-old puppies with families that don’t have the time, willingness, or resources to properly care for them. This can lead to health and behavior issues, relinquishment to a shelter, or neglect. In some instances, adding insult to injury, consumers who fall victim to predatory lending can also find themselves dealing with a sick animal.

REGISTERED SUPPORT / OPPOSITION:

Support

Animal Legal Defense Fund (Sponsor)
Social Compassion in Legislation

Opposition

None on file.

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