

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1211
Economic Matters

Consumer Credit - Commercial Financing Transactions

This bill establishes a regulatory framework for businesses that engage in commercial financing transactions. Specifically, the bill establishes requirements related to disclosures, annual percentage rate (APR) calculations, repayment terms, and other related items, as well as the extension of special offers. The Office of the Commissioner of Financial Regulation (OCFR) within the Maryland Department of Labor must adopt regulations to implement the bill. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: Special fund and general fund revenues may increase minimally due to the bill's penalty provisions, as discussed below. Implementation and related enforcement can likely be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill authorizes the Nondepository Special Fund to be used to cover the costs of implementing the bill's requirements.

Definitions

The bill defines “commercial financing” as a type of financing that encompasses “open-end financing,” “closed-end financing,” “sales-based financing,” a “factoring transaction,” or another form of financing. Those types of financing are defined as follows:

- “Open-end financing” means an agreement for one or more extensions of open-end credit (secured or unsecured). This includes credit extended by a provider (*i.e.*, the person extending a financing offer) under a plan in which (1) the provider reasonably contemplates repeated transactions; (2) the provider may impose a finance charge on an outstanding unpaid balance; and (3) the amount of credit that may be extended during the term of the plan is generally made available to the extent any outstanding balance is repaid.
- “Closed-end financing” means a closed-end extension of credit (secured or unsecured), including equipment financing, that does not meet the definition of a lease under the Uniform Commercial Code.
- “Sales-based financing” means a transaction that is repaid by a recipient to a provider over time as a percentage of sales or revenue, in which the payment amount may increase or decrease according to the volume of sales made (or revenue received) by the recipient.
- A “factoring transaction” is an accounts receivable purchase transaction that includes an agreement to purchase, transfer, or sell a legally enforceable claim for payment held by a recipient for goods the recipient has supplied or services the recipient has rendered that have been ordered but for which payment has not been made.

In all cases, the recipient must *not* intend to use the proceeds primarily for personal, family, or household purposes.

Applicability Provisions

The bill specifies entities and activities that are excluded from regulation, including financial institutions, commercial financing transactions for more than \$2.5 million, and certain commercial financing transactions related to vehicle dealers or rental vehicle companies.

In order to determine whether a financing transaction is a commercial financing transaction subject to the bill’s requirements, a provider may rely on a statement of intended purpose

made by a recipient, as specified. A provider may not be required to verify that the proceeds of a commercial financing transaction are being used in accordance with a recipient's statement of intended purpose. The extension of a specific offer or provision of disclosures for commercial financing by a provider, in and of itself, may not be construed to mean that the provider is originating, making, funding, or providing commercial financing.

Method of Calculating Annual Percentage Rates

Generally, the bill requires an APR to be (1) expressed as a yearly rate, including all fees and finance charges and (2) calculated in accordance with the federal Truth in Lending Act. In addition, an APR must be calculated based on the estimated term of repayment and the projected periodic payment amounts of a commercial financing transaction, regardless of whether federal law or regulation would require an APR to be calculated for a certain transaction. Additional requirements apply depending on the type of commercial financing.

For sales-based financing transactions, a provider must inform OCFR how it intends to calculate the estimated APR of each sales-based financing transaction. By January 1 each year, a licensee must report to OCFR on (1) the estimated annual APR given to each recipient and (2) the actual APR of each completed sales-based financing transaction. If OCFR finds there was an unreasonable deviation between estimated and actual APRs of sales-based financing transactions, the licensee may be required to use a different method to determine projected sales volume.

Required Disclosures

The bill establishes numerous disclosure requirements that apply to each type of financing. Although specific requirements differ based on the financing type, generally, the bill requires a provider to disclose certain information to a recipient when extending a specific offer (e.g., the total amount financed and disbursement amount, the finance charge, the estimated APR, etc.). Additional disclosures regarding payment amounts apply depending on whether the payments are fixed or variable, or if a recipient pays off or refinances before the end of the scheduled repayment period. Similar requirements apply for special offers.

Required Pay Offs

A provider may require a recipient to pay off the balance of an existing commercial financing transaction from the same provider as a condition of obtaining a new or renewal commercial financing transaction. In such cases, the provider must disclose (1) the amount of the new or renewal commercial financing that will be used to pay off the portion of the existing financing that consists of any required prepayment charges and (2) any unpaid interest that was not forgiven at the time the new financing was entered into. The bill stipulates the manner in which the prepayment charge must be calculated. If the

disbursement amount of the new or renewal financing transaction will be reduced to pay down any unpaid portion of the outstanding balance, the provider must disclose the actual dollar amount by which the disbursement amount will be reduced.

Signature

A recipient must sign each applicable disclosure before a provider may allow the recipient to proceed with the commercial financing application.

Additional Disclosures

If a provider provides additional disclosures, the additional disclosures are not considered required disclosures (*i.e.*, as required by the bill). The bill specifies the manner in which any additional disclosures must be presented.

Regulations

The regulations adopted by OCFR must be substantially the same as regulations adopted by the New York State Department of Financial Services regarding commercial financing.

Enforcement Provisions

OCFR must impose a civil penalty of up to \$2,000 for each violation of the bill and \$10,000 for each willful violation of the bill. Any such civil penalties accrue to the general fund. Additionally, OCFR may order additional relief, including restitution or a permanent or preliminary injunction on behalf of a recipient affected by a violation of the bill. Further, if a complaint is filed about a violation of the bill, OCFR may investigate the complaint and use any of the investigative and enforcement powers provided under State law.

Current Law:

Commissioner of Financial Regulation – Investigative and Enforcement Powers

OCFR has the power to vigorously investigate financial transactions to determine whether a person has violated a law, regulation, rule, or order over which the commissioner has jurisdiction. For the purposes of an investigation or proceeding, the commissioner may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, and require the production of documents and other evidence. If a person refuses to obey a subpoena from the commissioner, the commissioner may apply to the appropriate circuit court to issue an order requiring the person to appear before the commissioner and produce any requested evidence. If the court issues such an order, failure to obey it subjects the person to contempt of court.

When the commissioner determines, after notice and a hearing, as specified, that a person has engaged in a violation of a law, regulation, rule, or order, the commissioner may issue a cease and desist order, suspend or revoke the license of the violator, and/or issue a penalty order against the person for up to \$10,000 for a first violation and up to \$25,000 for each subsequent violation.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division within the Office of the Attorney General (OAG) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Fiscal Effect: Although OCFR indicates it may need additional staff in order to implement the bill's requirements, the Department of Legislative Services notes that, due to the uncertainty of how many entities in the State may be subject to the bill, OCFR can likely accommodate any short-term workload increase with existing resources. The bill does not include any licensing or registration requirements, and it includes numerous exemptions from its provisions, so it is unclear how many commercial lenders are affected by the bill. To the extent that there are significantly more entities in the State than expected over multiple years (and many additional complaints), OCFR may need to hire additional staff.

The Judiciary and OAG can handle any increase in caseloads (likely minimal) with existing resources.

Any impact on general fund revenues (due to OCFR civil penalty provisions) or special fund revenues (due to imposition of existing MCPA civil penalty provisions) is also expected to be minimal.

Small Business Effect: OCFR notes that the product standards and lending requirements established by the bill may benefit small businesses by allowing them to borrow in a transparent and affordable manner. However, the commercial lenders subject to the bill's requirements may incur additional compliance costs, to the extent such lenders are small businesses based in the State. However, any such impact cannot be reliably determined without additional information (*e.g.*, the number of lenders in the State affected by the bill, the regulations adopted by New York State and subsequently adopted in Maryland, *etc.*).

Additional Information

Prior Introductions: None.

Designated Cross File: SB 825 (Senator Kramer) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510