

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Commercial Law

SUBTITLE 15. COMMERCIAL FINANCE LICENSING

- X Doing business without license prohibited.
- X-1. Definitions.
- X-2. Exemptions.
- X-3. Application for license.
- X-4. Conditions for issuance of a license.
- X-5. Locations; change of address.
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- X-12. Prohibited practices of licensees.
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§ X. Doing business without license prohibited.

a. No person or other entity shall engage in the business of making or soliciting commercial financing products to businesses located in Maryland except as authorized by this section and without first obtaining a license from the Commissioner.

b. For the purposes of this section, a person or entity shall be considered as engaging in the business of making commercial financing products to businesses located in Maryland if it solicits or consummates commercial financing products to any business or commercial enterprise located in Maryland.

c. For purposes of this section, a business is "located in" Maryland if the business has its principal place of business in Maryland.

d. No employee of a person licensed under this section is required to obtain a license to engage in any activity within the scope of that employment.

§ X-1. Definitions. For purposes of this section:

- a. "Commercial financing product" means any advance of funds to a commercial or business enterprise made for the purpose of assisting the business with its capital needs, including but not limited to:

- (i) loans or lines of credit made to a business or commercial enterprise in a principal amount of five hundred thousand dollars or less, whether secured or unsecured;
- (ii) purchase transactions where an entity purchases accounts, receivables, intangibles, revenue or other actual or perceived assets of the business if any single payment or advance of the purchase price for the purchased accounts, receivables, intangibles, revenue or other actual or perceived assets of the business is in the amount of five hundred thousand dollars or less; or
- (iii) any leasing transaction where any funds are provided to the business or commercial enterprise by the leasing business or any affiliate of the leasing business in the amount of five hundred thousand dollars or less; and

b. "Commissioner" means the Commissioner of Financial Regulation.

c. "Making or soliciting" means:

- (i) providing commercial financing products to small businesses;
- (ii) marketing commercial financing products on behalf of providers of commercial financing products;
- (iii) receiving any compensation from a provider of commercial financing products based on the value of the commercial financing product provided in exchange for a referral of small business or its owner; and
- (iv) entering into an agreement with a federal or state banking organization in which the federal or state banking organization originates the commercial financing product and the non-bank entity acquires a participation or syndication interest, in part or whole, of the commercial financing product and the
- (v) non-bank entity receives compensation for marketing or servicing the transaction from the federal or state banking organization, or collects any payments due under the commercial financing product; or
- (vi) provides any indemnity or loss protection to the federal or state banking organization for losses the federal or state banking organization may incur as a result of performance of the commercial financing product.

§ X-2. **Exemptions.** The following shall be exempt from the provisions of this section;

a. any person who makes or solicits five or fewer commercial financing products to businesses located in Maryland within any

twelve month period;

b. any state or federal bank;

c. any federal credit union;

d. any insurance company;

e. any person if and to the extent that such person is lending money and licensed in accordance with, and as authorized by, any other applicable law of the state of Maryland; provided, however, such exemption shall apply only to those transactions subject to requirements under the authorizing law; or

f. any transaction that is intended to be a purchase of the ownership, in whole or part, of a business or commercial enterprise.

§ X-3. Application for license.

a. An application for a license shall be in writing, under oath, and in the form prescribed by the Commissioner and shall contain such information as the Commissioner may require by regulation. The application shall set forth all of the locations at which the applicant seeks to conduct business pursuant to this section. At the time of making the application for a license, the applicant shall pay to the Commissioner a fee as prescribed by regulation for each proposed location for investigating the application. For applicants with offices located outside of Maryland, each office location must be set forth in the application, but the investigation fee is required only for the applicant's Maryland locations, or if the applicant does not have an office located in Maryland the applicant's principal place of business.

b. In connection with an application for a license, the applicant shall submit an affidavit of financial solvency noting that the applicant is currently able to meet its long-term debt and financial obligations.

c. The applicant shall also prove, in form satisfactory to the Commissioner, that the applicant has available for the operation of such business liquid assets of at least fifty thousand dollars. This amount shall be maintained for the period during which the licensee is licensed.

d. If a person or entity holding a license seeks to open a new location in Maryland for the conduct of activities licensable under this section, the licensee shall first submit written notification of this fact to the Commissioner. The notification shall contain the address of the new location and the license number. An investigation fee as prescribed in regulations shall be paid for each additional location in Maryland. The additional location shall be authorized upon written approval by the Commissioner or after 90 days have passed since the notification was provided and investigation fee was paid unless the Commissioner denies the request for an additional location prior to the expiration of the 90 days. The Commissioner may deny a request for an additional location in Maryland if the licensee no longer meets the licensing criteria, in which case, the Commissioner shall send a written denial to the licensee.

§ X-4. **Conditions for issuance of a license.** Upon the filing of such application and the payment of such fees, if the Commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the controlling members thereof if the applicant be a partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this section, and if the Commissioner shall find that the applicant has a minimum of twenty-five thousand dollars of tangible net worth, the Commissioner shall thereupon execute a license. The Commissioner shall ensure that the application process is not unduly burdensome and does not limit access to capital for small businesses by discouraging market participation. To evaluate applications, the Commissioner may require applicants to submit records of criminal convictions to determine the character and general fitness of the applicant. The Commissioner may also require the applicant to submit relevant credit reports and any bankruptcy or insolvency records, in addition to the affidavit of solvency, to determine the financial responsibility and general fitness of the applicant. Each license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the Commissioner shall not so find, a license shall not be issued and the Commissioner shall notify the applicant of the denial. If an application is denied or withdrawn the Commissioner shall return to the applicant the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating such application. The Commissioner shall approve or deny every application for a master license under this section within 90 days from the filing thereof with the applicable fees. As used in this section, "controlling member" means a person who, directly or indirectly, owns, controls or holds with power to vote ten per cent or more of the voting stock of the applicant or of any person which owns, controls or holds with power to vote ten per cent or more of the voting stock of the applicant.

§ X-5. **Locations; change of address.**

a. A license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. No license shall be transferable or assignable, except as provided for in section X-6.

b. Every location used by the licensee to conduct business must be identified in the application. After a license has been issued, any application for a change in address for any location in Maryland or new location in Maryland must be submitted within 45 days of such proposed change or addition. The licensee shall pay to the Commissioner a fee as prescribed by regulation for each such change or addition and shall provide any information which may be required regarding such new location. If the Commissioner is not satisfied that such change or addition is in accordance with the purposes of this section, the Commissioner shall refuse such change of location or additional location and notify the licensee of such determination.

§ X-6. **Changes in control.**

a. In the event of a change of control of a licensee, unless prior approval of the new ownership has been obtained from the Commissioner, the license granted under this subtitle shall be suspended until such time as approval of the new ownership as the license-holder has been granted by the Commissioner.

b. The Commissioner shall approve or disapprove the application in writing within 90 days after the date the application is filed with the Commissioner.

c. Prior approval is not required for a licensee or a person with control of a licensee to obtain control of another licensee. If a licensee or person with control of a licensee obtains control of another licensee, the Commissioner shall be informed of the change in control within 90 days following the change.

d. As used in this section: (i) the term "person" includes an individual, partnership, corporation, association or any other organization; and (ii) the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of such licensee, the ownership of voting stock of any person which possesses such power or otherwise. Control shall be presumed to exist if any person, directly or indirectly, owns, controls or holds with power to vote ten per cent or more of the voting stock of any licensee or of any person which owns, controls or holds with power to vote ten per cent or more of the voting stock of any licensee, but no person shall be deemed to control a licensee solely by reason of being an officer or director of such licensee or person. The Commissioner may in his discretion, upon the application of a licensee or any person who, directly or indirectly, owns, controls or holds with power to vote or seeks to own, control or hold with power to vote any voting stock of such licensee, determine whether or not the ownership, control or holding of such voting stock constitutes or would constitute control of such licensee for purposes of this section.

§ X-7. Grounds for suspension or revocation.

a. The Commissioner may suspend or revoke any license issued under this section if the Commissioner shall find that:

(i) the licensee has failed to pay any sum of money lawfully demanded by the Commissioner or to comply with any demand, ruling, or requirement of the Commissioner within a reasonable period of time;

(ii) the licensee has violated any provisions of this section;
or

(iii) any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Commissioner in refusing originally to issue such license.

b. Any licensee may surrender any license by delivering to the

Commissioner written notice that the licensee thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

c. No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

d. Every license issued pursuant to this section shall remain in force and effect until it shall have been surrendered, revoked, or suspended in accordance with the provisions of this section, but the Commissioner shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this section.

e. Whenever the Commissioner revokes or suspends a license issued pursuant to this section, the Commissioner shall execute a written order to that effect. The Commissioner shall file one copy of such order in the office of the department and serve a copy upon the licensee.

§ X-8. Examinations. For the purpose of discovering violations of this section or securing information lawfully required under this section, the Commissioner may at any time, and as often as may be determined, either personally or by a person duly designated by the Commissioner, investigate the business and examine the books, accounts, records, and files used therein of every licensee in connection with the activity covered under this section. For that purpose the Commissioner and duly designated representatives shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The Commissioner shall have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to such business.

§ X-9. Books and records.

a. The licensee shall keep and use in its business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this section and with the rules and regulations lawfully made by the Commissioner pursuant to this section. Every licensee shall preserve such books, accounts, and records for at least two years after the last payment on any account was made or two years after an account is written off as a loss. Preservation of photographic reproduction thereof or records in photographic form, including an optical disk storage system and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination upon request shall constitute compliance with the requirements of this section.

b. Each licensee shall annually on or before the first day of April file a report with the Commissioner of any changes to the information in the license application or to the information in the prior annual report.

§ X-10. Advertising.

a. No licensee shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcasted, in any manner whatsoever any statement or representation with regard to the rates, terms, costs or conditions for a commercial financing product which is false, misleading or deceptive.

b. No licensee shall make, directly or indirectly, orally or in writing, by any method, practice or device, any representation that it is licensed under this section, except a representation that such licensee is licensed as a licensed commercial financing provider by the Commissioner.

c. No licensee shall transact any business subject to this section under any other name or at any other place of business than that named in the license, except as may be authorized by the Commissioner, and the Commissioner shall permit licensees to register and use "doing business as" names with the department, including providing such names in the application.

X-11. Disclosures.

a. A licensee shall disclose all of the following information to a small business at or before consummation of a commercial financing transaction:

- (i) The total amount of funds provided.
- (ii) The total dollar cost of the financing.
- (iii) The term or estimated term.
- (iv) The method, frequency, and amount of payments.
- (v) A description of prepayment policies.
- (vi) All fees charged or chargeable by the licensee in connection with the financing.

§ X-12 Prohibited practices of licensees.

a. No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding except as otherwise authorized by applicable law.

b. No licensee shall take any instrument in which blanks are left to be filled in after execution.

§ X-13. Penalties.

a. Any person required to be licensed under this section who makes or solicits any commercial financing product under this section to a business or commercial enterprise located in Maryland without first obtaining a license is subject to a civil penalty imposed by the Commissioner of up to \$1,000 per transaction but not exceeding a total civil penalty of \$250,000.

§ X-14. Regulations. The Commissioner is hereby authorized and empowered to make such rules and regulations, and such specific rulings, demands, and findings as may be necessary for the implementation of the licensing requirement of this section.

§ X-15. Severability. If any provision of this section or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

§ X-16. No Private Right of Action.

- a. Nothing in this section is intended to, or does, create a private right of action against any person or other entity based upon compliance or noncompliance with its provisions.
- b. Authority to enforce compliance with this part is vested exclusively in the Commissioner.

Section 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any commercial financing transaction before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.