

Hudson Cook, LLP • Attorneys at Law • www.hudco.com

7037 Ridge Road | Suite 300 | Hanover, Maryland 21076
410.684.3200 • Toll Free: 888.422.7529 • Fax: 410.684.2001

Offices in: California, Connecticut, Maine, Maryland, Massachusetts, Michigan, New York, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia and Washington, DC

March 1, 2020

Chairman Dereck E. Davis
231 House Office Building
6 Bladen Street
Annapolis, MD 21401

HB 1478 (Howard) – OPPOSE

Dear Chairman Davis and Members of the Economic Matters Committee:

I am a Maryland attorney with a practice focus on small business finance regulatory compliance. I represent the Commercial Finance Coalition, a group of responsible finance companies that provide needed capital to small and medium-sized businesses. I am writing this letter to respectfully express my opposition to HB 1478, which would prohibit the purchase of a business's future credit card and debit card revenue for an agreed-upon purchase price.

The purchase of a business's future credit card and debit card revenue is not a loan. Although sometimes called a "merchant cash advance" the purchase of future credit card and debit card revenue is a type of commercial factoring transaction. It is not an "advance" or a loan. A business makes payments only to the extent that the business actually generates credit card and debit card revenue.

Example: A business that sells 10% of its future credit card and debit card revenue would be required to make the following payments over the course of a week:

Day	Credit and Debit Card Sales	Payment
Sunday	\$0 (Closed on Sundays)	\$0
Monday	\$3,100	\$310
Tuesday	\$3,560	\$356
Wednesday	\$2,500	\$250
Thursday	\$1,750	\$175
Friday	\$5,000	\$500

Catharine S. Andricos	†^	Justin B. Hosie	●●
Michael A. Benoit	^+	Thomas B. Hudson	^*✱
Frank H. Bishop, Jr.	▽♦✱	Lauren T. Hunt	✱✱
Catherine M. Brennan	*◇^<	Eric L. Johnson	☐
Hurshell K. Brown, Jr.	▶	Sharon E. Johnson	^*
Thomas J. Buiteweg	○	Erica A.N. Kramer	●●
Anastasia V. Caton	^*☐	Rebecca E. Kuehn	^*✱
Patricia J. Cacciola	◇	J. Curtis Linscott	▶✱
A. James Chareq	☐ <	Daniel J. Laudicina	*
Dana F. Clarke	†>♦	Wingrove S. Lynton	*
Robert A. Cook	**	Joseph E. Mayk	■^
Patricia E.M. Covington	✱	Lucy E. Morris	^◇
Edward P. D'Alessio	^■◇✱	Nicole F. Munro	*
David S. Darland	^*	L. Jean Noonan	*
Lisa C. DeLessio	^*✱	Thomas P. Quinn, Jr.	◆
Allen H. Denson	^*✱	Mark E. Rooney	^◇
Charles F. Dodge	*	Aline C. Ryan	*
Katherine C. Fisher	*<	H. Blake Sims	◎●
Anne P. Fortney	^▲*	Jennifer L. Sarvadi	^*✱
Robert F. Gage	○+	Ryan S. Stinneford	▽♦
Michael A. Goodman	✱	Clayton C. Swears	^*
Ronald D. Gorsline	◎●	Daniel O'C. Tracy, Jr.	**
W. David Hicks	◆	Joel C. Winston	○*✱
		Elizabeth C. Yen	>

Admitted in:

Alabama	◀	Illinois	☐	New Jersey	■	Pennsylvania	▲
California	†	Indiana	<	New York	◇	Tennessee	◆
Connecticut	>	Maine	▽	North Carolina	☐	Texas	▶
District of Columbia	^	Maryland	*	Ohio	+	Virginia	✱
Florida	●	Massachusetts	◆	Oklahoma	☐	Washington	◇
Georgia	◎	New Hampshire	✱	Oregon	<	Of Counsel	✱
Hawaii	▲	Michigan	○	South Carolina	✱	Partner Emeritus	*

Saturday	\$5,250	\$525
----------	---------	-------

In contrast with a loan, these transactions do not have a fixed term or “due date” because repayment is based on actual revenue. This flexible repayment obligation is helpful to small and medium-sized businesses with variable cash flow.

No other state has banned the purchase of a business’s future credit card and debit card revenue. California is the only state in the U.S. that has adopted legislation regulating the purchase of a business’s future credit card and debit card revenue.¹ California SB 1235 (2018) requires non-bank providers of commercial finance to disclose the cost of financing. The New York legislature is considering requiring non-bank providers of commercial finance to obtain a license.² The New Jersey legislature is considering requiring small business financing disclosures.³ These states recognize that licensing and disclosure requirements for non-bank providers of commercial finance are common-sense safeguards to protect small businesses while maintaining access to capital. In addition, reasonable licensing and disclosure proposals have received broad support from industry groups.

Maryland could be a national leader by adopting *both* licensing and disclosure requirements. No state in the U.S. has adopted legislation that would require both licensing and disclosures for non-bank providers of commercial finance. Taking this approach, rather than prohibiting a specific product, would help small and medium-sized businesses while preserving access to capital.

For the reasons outlined above, I respectfully request that you vote no on HB 1478 as currently drafted. Thank you for your attention to this matter.

Very truly yours,



Katherine C. Fisher

cc: Members of the Economic Matters Committee
Frank D. Boston, III

¹ California SB 1235 (2018) https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1235.

² New York SB 6688 <https://www.nysenate.gov/legislation/bills/2019/s6688>.

³ New Jersey SB 233 https://www.njleg.state.nj.us/2020/Bills/S0500/233_11.PDF.



Katherine ("Kate") C. Fisher
Partner
Hudson Cook, LLP
410.782.2356
kfisher@hudco.com

Katherine ("Kate") Fisher is a partner at the law firm of Hudson Cook, LLP and co-chairs the firm's Business Funding Group. Her practice focuses on Consumer Financial Services and Small Business Financing. Kate represents banks, finance companies, private equity and investment bank investors, merchant cash advance companies, and small business lenders in establishing new programs and products, and conducting due diligence and compliance reviews of consumer lending and business financing portfolios.

Kate's practice also includes assisting clients with compliance with state and federal consumer protection and related laws as they develop and maintain mortgage lending, automobile finance and other credit programs.

Kate is a founding member of the Alternative Finance Bar Association, an organization of attorneys who represent merchant cash advance companies and lenders providing financing to small businesses. She has testified before the United States House of Representatives Small Business Subcommittee regarding improving small business capital access and recently appeared several times before the California legislature and New Jersey Senate Committee on Commerce regarding proposed disclosures for business finance transactions.

Kate is the Vice Chair of the Maryland Bar Association's Consumer Credit and Financial Institutions Committee. Kate has been presenting the Money Smart for Older Adults (MSOA) program in Maryland through the Maryland State Bar Association in 2018-2019. MSOA is an award-winning curriculum jointly developed by the FDIC and the Consumer Financial Protection Bureau which covers topics such as common types of elder fraud and scams, identity theft, scams that target homeowners and how to be financially prepared for a disaster.