
Senate Bill 825

Date: March 9, 2022
Committee: Finance Committee
Bill Title: Consumer Credit - Commercial Financing Transactions
Re: Letter of Information

Senate Bill 825 creates a regulatory regime for “commercial financing” transactions – as defined by the bill. This regulatory regime establishes certain requirements surrounding these transactions, such as those related to disclosures, annual percentage rate calculations, repayment terms, extensions of special offers, and other related requirements. This new regime falls under the regulatory and enforcement authority of the Office of the Commissioner of Financial Regulation (“OCFR”). Specifically, “providers” of commercial financing (also defined by the bill) will be subject to a certain review process, which must be established by the OCFR, as they will be required to notify the OCFR as to which method the provider intends to use when calculating the estimated annual percentage rates for each transaction.

Further, on or before January 1 of each year, providers must report to the OCFR on those estimated annual percentage rates given to each participant, and the actual annual percentage rate of each completed transaction, along with any other information the Commissioner considers necessary. Further, SB 825 provides that the OCFR shall adopt regulations substantially the same as regulations adopted by the New York State Department of Financial Services regarding commercial financing (see 23 NYCRR 600). SB 825 also provides that violations of its mandates are unfair, abusive, or deceptive trade practices within the meaning of Title 13 of the Commercial Law Article and subject to the enforcement and penalty provisions contained therein.

SB 825 does not include a formal licensing and/or registration regime, which would permit the OCFR to monitor and track the business entities subject to and operating within the state, their required reports, any complaints received, and other requirements of the bill. Further, there is no connection with the Nationwide Multistate Licensing System (“NMLS”) upon which the OCFR relies to carry out its supervisory activities, making the mandates of this bill difficult to operationalize from a monitoring, investigatory and enforcement perspective.

SB 825 may, in-part, positively impact Maryland small businesses. The product standards, and lending regime established by this bill can be expected to give small businesses the ability to utilize sales-based financing products in a transparent and affordable manner. The commercial lenders that are subject to this bill would incur additional costs associated with preparing reports on annual percentage rates to submit to OCFR.

However, because the bill establishes a complicated system for disclosing and reporting on interest rates, similar to the one adopted but not yet implemented by the State of New York, the system may be dependent upon action by the New York Department of Financial Services. Maryland small businesses, lenders and borrowers alike, may be negatively impacted if the rollout of the system in New York is significantly delayed or New York enacts systems or procedures not appropriate to or anticipated by Maryland businesses.

The Department respectfully requests that the Committee consider this information.