**Innovative Lending Platform Assn  - SB 825 Support**

Uploaded by: Chris Grimm

Position: FWA

Innovative Lending Platform Association

**Testimony on Behalf of the Innovative Lending Platform Association**
**In Support of Senate Bill 825,**
**with Amendment**

Chair Kelly, Members of the Senate Finance,

The Innovative Lending Platform Association (ILPA) thanks you for the opportunity to submit testimony in support of Senate Bill 825.

Thank you to Senator Kramer for introducing this important legislation and the Maryland Retailers Association and other stakeholders that support this bill. This is the third time we are testifying before the Committee on small business finance matters, and we are pleased to be testifying in support this year.

ILPA is the leading trade organization for online lending and service companies serving small businesses. Our members (BFS Capital, Biz2Credit, BlueVine, Fundbox, Funding Circle, Kabbage, Lendio, Mulligan Funding, OnDeck, and PayNet) offer various commercial financing products. They are proud to provide thousands of Maryland businesses with working capital to invest in their business, purchase inventory, hire additional hands for the busy season, expand the business, or repair damaged or outdated equipment. Our members use innovative underwriting and the latest technology to quickly evaluate a customer's credit risk and provide financing in as little as 24 hours.

ILPA is dedicated to advancing best practices and standards that promote responsible innovation and access to capital. The ILPA strongly supports transparency in small business financing disclosures, and our member companies are committed to providing small businesses with responsible and transparent financing options. In 2016, the ILPA created an industry-first model disclosure tool – the SMART Box® – that presents small business borrowers with comprehensive pricing metrics and identifies key loan terms in plain, easy-to-understand language.

This is also why ILPA supported New York's commercial finance disclosure law requiring small business financing providers to disclose key metrics and essential terms that customers expect to see. We believe small businesses are empowered when presented with easy-to-understand metrics and can compare the costs, term, and other critical metrics across different providers and products.

As more and more states are following New York's lead and adopting small business finance disclosure laws, we are requesting a small measure in each state to ease compliance burdens across states. We request a minor amendment to allow for disclosure forms approved in states that meet or exceed SB 825's to satisfy Maryland's requirements. This will allow providers to voluntarily use the same form across multiple states if it meets those states' minimum standards.

We appreciate the Committee's consideration of SB 825 and ask for the Committee's support.

**Innovative Lending Platform Assn - SB 825 - Propos**
Uploaded by: Chris Grimm
Position: FWA

**Amendment to Senate Bill 825**

**Page 20, Line 28:** Insert

*The Commissioner shall approve the use of commercial financing disclosure forms approved for use in other states whose commercial financing disclosure requirements are substantively similar to or exceed the requirements of this subtitle.*

**LJM FWA Testimony RE SB 825.pdf**
Uploaded by: Leigh Maltby
Position: FWA

*Americans for Patient Access*
1818 Parmenter Street
Suite 300
Middleton, WI 53562



Leigh J. Maltby, *Associate Director*
*Americans for Patient Access*

Chairwoman Delores Kelley
Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, Maryland 21401

March 9, 2022

**Re: SB 825 Consumer Credit - Commercial Financing Transactions**
**Position: Favorable with Amendment**

Good afternoon, Chairwoman Kelley, Vice Chair Feldman, and Committee Members,

My name is Leigh Maltby. I am the Associate Director of Americans for Patient Access. First, I would like to thank Senator Kramer for his time yesterday to carefully listen to our concerns and willingness to accept our amendment as friendly. We are all trying to avoid unintended consequences.

Americans for Patient Access is a national, nonprofit trade organization that supports innovative medical lien solution programs that provide physicians with financial capital they need to provide lien-based care to personal injury patients while waiting for the final resolution of the personal injury case.

Our membership consists of physicians and specialty finance companies that factor medical receivables owed to a health care provider by an injured person.

The APA works to provide immediate access to necessary and quality healthcare for uninsured and under-insured patients who have been injured through no fault of their own, and to aid medical providers in offering their services to as many patients as possible, regardless of the patient's ability to pay. We are a financial solution to medical providers that want to treat personal injury patients, but cannot wait 2-4 years to get paid, if at all, from the underlying legal claim.

By factoring those receivables, physicians get immediate, prompt, guaranteed payment and can keep their doors open to personal injury patients.

We believe that the definitions of 'commercial financing', including factoring, and 'provider' as one who engages in 'commercial financing' clearly implicate how we operate.

We do not believe medical factoring was the target of this bill, but as drafted, it will be impossible for our members to comply with the disclosure requirements. For example, our

factoring transaction is an outright sale and purchase, so the concept of APR in the bill does not apply in our business model. There is no APR – it is just sale price and payment price. Our members want to be compliant providers of commercial financing in the state of Maryland, but the disclosure requirements in SB 825 would create confusion for our medical providers and complicate our agreements.

We also have a concern that this bill mandates the adoption of the regulations adopted by the New York State Department of Financial Services regarding commercial financing. It is our understanding that those implementing regulations have yet to be promulgated. Thus, we do not know how those regulations would impact our transactions in Maryland and would make Maryland law subject to the vagaries of any amendments to the New York regulations in perpetuity.

The APA is in favor of transparency. As business partners to medical providers, we are transparent in disclosing how we calculate the amount paid to or advanced to the physician, the discount on the receivables purchased, and the circumstances, if any where the medical provider would owe the factoring company any repayments.

We want to continue to do business in this state as we provide meaningful financial assistance to medical providers across Maryland that treat personal injury patients and improve patient access to quality medical care.

We request an amendment that would specifically and explicitly exempt our business model from this bill. This language should be inserted in the exemption section, 12-1102, starting on page 7, line 7:

[.] OR;

**"*A COMMERCIAL FINANCING TRANSACTION THAT IS THE FACTORING, PURCHASE, SALE, ADVANCE, OR SIMILAR, OF ACCOUNTS RECEIVABLES OWED TO A HEALTH CARE PROVIDER AS A RESULT OF A PATIENT'S PERSONAL INJURY TREATED BY THE HEALTH CARE PROVIDER."***

With this amendment, and not passing on the merits of the intent of the bill, we can support, favorable with amendments.

Respectfully submitted,

Leigh J. Maltby, Associate Director

Americans for Patient Access

CC: Senator Ben Kramer

**SB0825_SponsorAmendment_523328-01**
Uploaded by: Senator Kramer
Position: FWA

**SB0825/523328/1**

AMENDMENTS PREPARED BY THE DEPT. OF LEGISLATIVE SERVICES

09 MAR 22
12:51:45

BY: Senator Kramer
(To be offered in the Finance Committee)

AMENDMENT TO SENATE BILL 825
(First Reading File Bill)

On page 6, in line 25, strike "**OR**".

On page 7, in line 7, after "**TRANSACTION**" insert "**; OR**

**(9) A COMMERCIAL FINANCING TRANSACTION THAT IS A FACTORING TRANSACTION, AN ADVANCE, OR A SIMILAR TRANSACTION OF ACCOUNTS RECEIVABLES OWED TO A HEALTH CARE PROVIDER BECAUSE OF A PATIENT'S PERSONAL INJURY TREATED BY THE HEALTH CARE PROVIDER**".

**ETA Opposition to SB 825 .pdf**
Uploaded by: Max Behlke
Position: UNF

ELECTRONIC TRANSACTIONS ASSOCIATION
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**March 9, 2022**

Senator Delores Kelley
Senate Finance Committee
Maryland Senate
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

**RE: Opposition to S.B. 825**

Chair Kelley, Vice Chair Feldman, and Distinguished Members of the Finance Committee,

On behalf of the Electronic Transactions Association (ETA), the leading trade association representing the payments industry, I appreciate the opportunity to share our broad concerns with S.B. 825.

The pandemic has underscored the importance of sustaining financing options for small businesses. Small businesses are the backbone of the economy, but they are also the most vulnerable during periods of economic volatility. Small businesses have different needs and objectives than consumers – often relying on financing to buy inventory, smooth cash flow, expand their marketing, and the ability to obtain financing that enables them to continue to grow.

ETA supports maintaining choice in small business financing, thus allowing small businesses to select, among multiple available options, the best product that suits their needs to secure the capital they need to be successful. S.B. 825, and similar measures, would impose burdensome barriers for providers of commercial financing, and likely result in less options for the very businesses the legislation aims to protect. Logic dictates that reducing options for small businesses in need of capital will hurt, not benefit, these same small businesses. Therefore, ETA asks this committee to reject S.B. 825 as currently drafted.

Specifically, ETA's concerns with S.B. 825 include:

## Definitions

The legislation references numerous phrases and terms, such as "interest accrued," without defining what these terms mean. Clarifications and precise definitions are necessary to provide certainty of the bill's requirements and to help ensure the ability to provide accurate and meaningful disclosures in compliance with the law.

- To provide regulatory certainty of which companies fall within the bill's commercial financing requirement, the legislation should define "financial institution" and ensure that the definition includes insured depository institutions and their related non-bank subsidiaries and affiliates that engage in banking activities.
- The definition of "provider" should exclude "1st party financing;" specifically, where the owner of the product or service is the one offering the financing opportunity.
- The legislation defines "total repayment amount" as the "disbursement amount of a sales-based financing transaction plus the finance charge". This definition needs to be refined to address situations where the "total repayment amount" and the "disbursement amount" are not the same, such as when a provider pays off a third-party on behalf of the recipient.

For example:

> A provider provides a recipient with a $20,000 loan with a finance charge of $2,000. However, the provider has to pay-off a third-party $3,000, which means that the recipient is going to receive a disbursement of $17,000. The disbursement of $17,000 plus the finance charge of $2,000 equals $19,000, not the actual total repayment amount of $22,000.

This is just one example of where the bill's definitions do not account for all real-world scenarios.

## Renewal Financing

- S.B. 825 requires disclosures for renewal financing but the bill provides no additional guidance on calculation or disclosure, which will likely cause confusion. While ETA is not opposed to disclosing how much of any new financing is being used to pay-off existing financing from the same provider, we think it should be a clear, succinct notice or a simple disclosure. The amount of disclosures and explanations required of financing providers is already voluminous and, with additional language and disclosures, will confuse the recipient and increase the likelihood that the recipient might not even read any of the disclosures.
- The legislation also requires providers of renewal financing to disclose any "double dipping" as described in the legislation. First, "double dipping" is not a formal term and is not widely used throughout the industry. Second, the term, as defined, fails to consider how renewal financing works in practice.

  > For example, at the time the disclosure is given, the balance on the existing financing will most likely change prior to consummation of the new financing agreement. Thus, the amount of the new financing that is used to pay-off prior financing could be less if additional payments on the prior financing are made or could be more if a recipient misses a payment.

  Therefore, ETA suggests replacing the "double dipping" question with a statement that "part of your renewal financing will be used to pay-off your current financing with [name of provider]."

## Annualized Percentage Rate

ETA is concerned that S.B. 825, by mandating an annual percentage rate or estimated annual percentage rate (collectively "APR") disclosure for commercial financing, will create significant confusion and uncertainty for Maryland small businesses trying to make informed decisions about the cost of financing products.

- The Truth in Lending Act ("TILA") was enacted strictly for consumer transactions, not commercial transactions and does not take into account the unique payment features of sales-based financing products, which do not have a fixed term, fixed payments, or have an absolute right to repay.
- Even the Consumer Financial Protection Bureau in its recent proposed regulations for Sec. 1071 of Dodd-Frank stated that because these types of products do not have a defined term or a periodic payment amount, it would require a funding company to assume or estimate parts of the APR formula, which only increases complexity. This is not a simple calculation and funding companies have to make a lot of assumptions in order to provide a small business with an Estimated APR, which in turn could lead to misleading disclosures, even if that was not the intention of the funding company.

- As an alternative to APR, ETA urges the committee to consider Total Cost of Capital ("TCC") as the method for disclosing the cost of financing products, which is what matters to small business owners. TCC captures all interest and fees (for certain products that do not charge interest, but rather a fixed fee for capital) that are a condition of receiving capital. TCC is readily calculable and provides the clearest, most accurate basis for comparison among commercial finance options, no matter how they are denominated.

## Calculation of APR for Daily Payment Products

The bill states that APR should be calculated in accordance with TILA, however, the legislation does not provide the necessary information to calculate APR for a daily payment product. Each month has a different number of days in which payments are collected and providers need to know how many payment days (not calendar days) to assume exist in every month. Simply assuming that payments can be made every calendar day is misleading because it's impossible to make a payment every day and this would assume more payments than actually can be made, thereby artificially inflating the APR, and leading to a misleading disclosure for daily payment products.

## Effective Date

As a threshold matter, S.B. 825 would adopt an effective date of October 1, 2022, which would place an undue regulatory compliance burden on an industry devoting all available resources to sustaining small businesses through COVID-19 financial struggles. Given the length of time it has taken the states of California and New York to adopt regulations, let alone implement them, the short timeframe provided by this legislation does not seem adequate. Instead, the legislation should allow for a longer regulatory comment and approval process, which will afford providers sufficient time thereafter to make the complex systemic and operational changes required for compliance with new regulations and disclosures of this complex and de novo nature.

## Sales-Based Financing APR Reporting

S.B. 825 requires providers of sales-based financing to report to the Commissioner each year (1) the estimated APR rates given to each recipient, and (2) the actual APR rates of each completed sales-based financing transaction. This would arguably require the provider to recalculate the APR of each sales-based financing at the time the recipient pays off the balance. ETA does not understand how this type of calculation will be beneficial to anyone. Moreover, the lack of a precise definitions for this requirement would have it apply across multiple scenarios.

For example:

> If a recipient decides to pay off a sales-based financing early for any reason, such as the recipient's desire to obtain a new financing product or a sudden increase in the recipient's cash flow, the actual APR will vary (possibly significantly) from the original estimated APR. Additionally, if the sales-based financing were to become charged off or subject to a workout arrangement, the actual APR will (possibly significantly) for the original estimated APR. ETA is unclear as to how this requirement would result in producing meaningful data.

ETA strongly opposes this requirement and any similar requirement, which could result in a false appearance that a provider is significantly underestimating the APR.

**Disclosure of Average Monthly Cost (for periodic payments that are not monthly)**

The requirement of a monthly payment amount disclosure for products that do not have a monthly payment is problematic for two reasons:

(1) it is confusing to the small business, and

(2) it expresses a preference for products that ultimately may be more expensive.

- Requiring disclosure of the actual frequency and amount of payments makes sense and is helpful to the small business. Requiring disclosure of a hypothetical frequency and amount is potentially harmful because of the confusion it could create. Small businesses may not understand why they are receiving a disclosure of a hypothetical monthly payment, and instead assume that they can pay monthly when, in fact, the financing contract requires payments of a different frequency. Adding such confusion is contrary to the purpose of the bill, which is to provide clear and transparent disclosures.
- Requiring disclosure of an average monthly cost for payments that are not monthly expresses a preference for products with monthly payments because products with monthly payments will have a lower average monthly cost than products with daily or weekly payments, as monthly payment products typically have longer terms. This ignores the reality that products with monthly payments may have a higher overall total cost due to the fact that the small business is paying interest over a longer term. Thus, a critical consideration is the overall total cost of a product as well as the periodic payment. More importantly, the disclosure seems likely to cause confusion given that the information would conflict with the written terms of the commercial financing agreement. The average monthly cost of a product is not relevant if it does not reflect the actual payments a small business is required to make, or even the actual monthly cost, given that daily, weekly, and bi-weekly payment frequencies all will have different monthly costs and different averages.

**TILA Disclosure Exemption**

The New York commercial financing disclosure law ("CFDL") provides that the definition of "commercial financing" *(b) does not include any transaction in which a financier provides a disclosure required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., that is compliant with such Act*. This provision should be incorporated into S.B. 825 as it prevents the unnecessary duplication of disclosures from providers who already provide TILA compliant disclosures in commercial financing transactions, and it encourages uniformity across the country, which reduces the burden of complying with the different disclosures in each state that are dependent on each state's specific CFDL requirements.

**Other State Commercial Financing Disclosure Laws**

California and New York have passed commercial financing disclosure laws, however, neither law has gone into effect because of the complexity of the issues.

- California has held at least eight rounds of comments on proposed regulations and New York has made two similar requests, even though they borrowed from much of the work already completed by California.
- The current draft of S.B. 825 directs the Maryland Commissioner of Financial Regulation to adopt regulations substantially similar to those adopted by the New York Department of Financial Services ("DFS"), however, the New York disclosure bill has numerous issues that have not been addressed.

The DFS is aware of these issues and has even pushed back the implementation date to an unknown date because of all the problems surrounding the disclosures and the potential for providers to provide misleading disclosures. ETA proposes that the Commissioner wait until the NY disclosure law and associated regulations are finalized, in effect and smoothed out before enacting the provisions of this bill and that, with the exception of requiring APR calculations, this legislation mirror the NY law and associated regulations. It will be nearly impossible for providers of small business financing to comply with two or more varying state laws governing commercial financing disclosures.

For example:

S.B. 825 requires a recipient to sign the required disclosures "before a provider may allow the recipient to proceed with the commercial financing application" whereas the NY commercial financing disclosure law requires the recipient to sign "prior to consummating a commercial financing". ETA is unclear what Maryland's version of this provision means. It could mean that the recipient must sign the disclosures prior to accepting the offer, in the middle of the application process, prior to funding or some other point in time. Ideally, a recipient will be required to sign the disclosure "prior to consummating a commercial financing" as is required by the NY law. That way, the recipient will be able to sign the disclosures simultaneously with any other documentation and the standards for NY and MD will be consistent.

* * *

Given how the COVID pandemic continues to threaten the survival of many Maryland small businesses, now is not the time to pass legislation that would threaten their commercial financing options by creating burdensome and confusing barriers for small business lending providers. S.B. 825 needs more thoughtful deliberation and industry input to create a clear, fair, and uniform regulatory structure. Therefore, ETA urges the committee to reject S.B. 825 in its current form and welcomes the opportunity to work with the sponsor and proponents of the legislation during the interim to develop a legislative proposal that all parties can support.

Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Sincerely,

Max Behlke
Director, State Government Affairs
Electronic Transactions Association
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# Background: Purchase of Future Account Receivables or "Merchant Cash Advance"

**Sales-based transactions, MCAs, are extremely flexible beneficial to businesses as they have:**

- No set terms.
- No set payments.
- No personal guarantee.
- Funder gets paid only when the business is paid.

The purchasing of future account receivables are not loans, but rather, they are a sale of a portion of the small businesses' future credit and/or debit card receivables. When companies provide funds to businesses in exchange for purchasing a percentage of the businesses' daily credit card income, those funds come directly from the processor that clears and settles the credit card payment. A company's remittances are drawn from customers' debit and credit-card purchases on a daily basis until the obligation has been met. Many purchasers form partnerships with payment processors and take a percentage of a merchant's future credit card sales. Purchasers offer an alternative to businesses who may not qualify for a conventional commercial loan and provide flexibility for merchants to manage their cash flow by fluctuating with the merchant's credit and/or debit card sales volume.

The distinguishing characteristic of a purchase of account receivables is that there is no fixed scheduled payment amount or term. When the merchant makes a sale via credit and/or debit card, a percentage of the transaction is forwarded to the purchaser. This continues until the total amount of purchased receivables has been paid. The MCA provider receives the purchased receivables in one of the following ways: (i) the merchant's processor forwards the purchased receivables directly to the funder; (ii) the merchant's receivables are deposited into a lockbox account that forwards the purchased receivables to the provider and remits the balance to the merchant; or (iii) the provider is notified of the amount of the credit card receivables generated and the funder debits the purchased portion from the merchant's bank account.

For many small businesses, the purchase of future account receivables is an alternative to a traditional commercial loan because the transaction does not require personal guarantees from the business owner, only a performance guaranty. The performance guaranty requires that the owner ensure that the business entity complies with all of the terms and conditions of the purchasing agreement. Moreover, unlike a commercial loan which has an absolute right to repay, in the event a business closes, and does not breach the agreement, the business is not held responsible to pay the remaining balance on the agreement. The purchaser takes a risk that a business may close. For example, in May 2018, when Maryland was stuck by severe storms and flooding, any small business that had to close its doors due to the disaster would not be obligated to pay the outstanding balance on the agreement because the business closed, without breaching the contract, as the purchaser assumed the risk in purchasing the future account receivables.

**MD Testimony - SB 0825.pdf**
Uploaded by: Patrick Siegfried
Position: UNF

March 9, 2022

Chairwoman Delores G. Kelley
Miller Senate Office Building, 3 East Wing
11 Bladen St., Annapolis, MD 21401
Annapolis, MD 21401

SB 0825 – Oppose

Dear Chairwoman Kelley and Members of the Finance Committee:

Chairwoman Kelley and Members of this committee, my name is Patrick Siegfried and I am here today on behalf of Rapid Financial Services, LLC ("Rapid"). Founded in 2006, Rapid is headquartered in Montgomery County, Maryland.

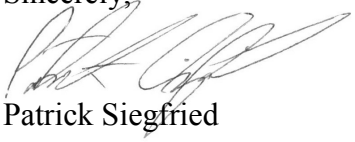
Rapid is a proud supporter and finance provider to small businesses nationwide. Rapid believes legislation impacting commercial finance should be tailored to the needs and use cases of the small business customers that utilize these products.

Multiple states, including Maryland, are discussing legislation that would require disclosures for certain commercial finance transactions. California was one of the first states to pass such commercial finance laws in 2018. Over the past 4 years, California's regulator has conducted multiple rounds of notice and comment periods for its draft regulations. We expect California to finalize these regulations later this year. Similarly, New York passed commercial finance disclosure legislation in 2021. While New York recently proposed its own draft regulations, it is currently planning a more in depth comment and review period and has paused the implementation of the New York law. And just two days ago, Virginia's legislature passed a comprehensive commercial finance disclosure law.

While Rapid is supportive of effective disclosure legislation, we urge this committee to work towards passing a bill that will not conflict with the efforts of these other states. Enacting differing disclosure requirements will lead to confusion among small business customers. Rapid strongly believes that the review of new commercial finance disclosure regulation in Maryland should be considered once the legal requirements in California, New York and Virginia are known so that Maryland's laws may more closely mirror and complement the laws of these other states.

While we oppose SB 0825, we are committed to working with this committee, and the sponsor, to create thoughtful and comprehensive legislation to regulate commercial financing.

Sincerely,



Patrick Siegfried
Deputy General Counsel
Rapid Financial Services, LLC

**SB 825 - CPD - Merchant Advances - Oppose.pdf**
Uploaded by: Steven M. Sakamoto-Wengel
Position: UNF

**BRIAN E. FROSH**
*Attorney General*

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*Chief Deputy Attorney General*

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*Deputy Attorney General*

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*Chief*
Consumer Protection Division

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**STATE OF MARYLAND**
**OFFICE OF THE ATTORNEY GENERAL**
**CONSUMER PROTECTION DIVISION**

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March 9, 2022

To: The Honorable Delores G. Kelley
Chair, Finance Committee

From: Steven M. Sakamoto-Wengel
Consumer Protection Division Counsel for Regulation, Legislation and Policy

Re: Senate Bill 825 – Consumer Credit – Commercial Financing Transactions
(OPPOSE)

The Consumer Protection Division of the Office of the Attorney General opposes Senate Bill 825, sponsored by Senator Kramer. Senate Bill 825 would require businesses that provide "Commercial Financing" to submit reports to the Commissioner of Financial Regulation but does not require those businesses to be licensed. "Commercial Financing" is defined as "open end financing, closed-end financing, sales-based financing, a factoring transaction, or another form of financing, *the proceeds of which the recipient does not intend to use primarily for personal, family or household purposes*." (Emphasis added).

The Division has significant concerns that proposed section 12-1103 on page 7 could undermine protections currently afforded Maryland consumers. That section would allow a provider of Commercial Financing to determine that a loan is commercial by "rely[ing] on a statement of intended purpose made by a recipient." Even if Senate Bill 825 were enacted, regulation of Commercial Financing transactions is significantly more limited than the regulation of consumer loans. The Division has encountered numerous instances in which a lender, seeking to evade regulation and usury caps, coerced a consumer borrower to sign a statement prepared by the lender stating that a loan is for commercial purposes. The proposed section opens the door to such abuses by lenders in the future.

In addition, despite the fact that SB 825's requirements for such Commercial Financing expressly apply only to loans that are not consumer loans, the bill makes a violation an unfair, abusive or deceptive practice in violation of the Consumer Protection Act. With limited exceptions, violations of the Consumer Protection Act are limited to consumer transactions, *i.e.*, transactions that are primarily for personal, family or household use, and expanding the CPA to cover business-to-

business transactions would open a door that could lead to a significant increase in the number of complaints received by the Division, requiring the Division to add corresponding resources.

Accordingly, the Consumer Protection Division respectfully requests that the Finance Committee issue an unfavorable report on Senate Bill 825.

cc: The Honorable Benjamin Kramer
Members, Finance Committee

**SB 825_HB1211_MDL_Letter of Information.docx.pdf**
Uploaded by: Andrew Fulginiti
Position: INFO

Maryland
DEPARTMENT OF LABOR

LEGISLATIVE OFFICE
45 Calvert Street
Annapolis, Maryland 21401
443-401-5129

# 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.

LEGISLATIVE OFFICE
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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.