

February 20, 2024

**The Honorable C. T. Wilson
Chair of House Committee on Economic Matters
Maryland House of Delegates
House Office Building, Room 231
6 Bladen St., Annapolis, MD 21401**

RE: Opposition to HB 0574 – Small Business Truth In Lending Act

Chair Wilson, Vice Chair Crosby, and Distinguished Members of the House Economic Matters Committee,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association representing the payments industry, I appreciate the opportunity to share our opposition and broad concerns with HB 0574.

ETA supports disclosures that promote transparency and accountability for small business borrowers. However, as drafted, the disclosures required in HB 0574 could be confusing for both online companies that provide financing to small business and the small business community. Moreover, ETA is concerned that the legislation’s effective date will not provide regulators with the necessary time to promulgate rules required by the legislation and will not give providers of commercial financing enough time to comply.

Small businesses are the backbone of the economy and have different needs and objectives than consumers. In response, providers of commercial financing to small businesses have developed credit products specifically designed to meet those needs and objectives. ETA supports maintaining choice in small business financing, however, HB 0574, would impose burdensome barriers for providers of commercial financing, and likely result in less options for the very businesses the legislation aims to protect. Therefore, ETA would like to work with the committee to incorporate changes to the current bill and oppose HB 0574 as currently drafted.

ETA’s concerns with HB 0574 can be summarized as follows:

Annualized Percentage Rate:

- **APR as applied to Commercial Financing:** ETA is concerned that HB 0574, 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. The Consumer Financial Protection Bureau (CFPB) 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.

- **Alternative Measurement:** ETA urges the Committee to consider Total Cost of Capital (“TCC”) as the method for disclosing the cost of financing products. The TCC method has been enacted in Connecticut, Florida, Utah, and Virginia, and is a key measurement that matters to small business owners.

Effective Date: The current effective date and timeline for implementation of HB 0574 would place an undue regulatory compliance burden on the industry. ETA respectfully recommends allowing for a longer regulatory comment and approval process, and a 180-day compliance period that begins after final rules are published.

Requirements to Report Certain Items to the Commissioner:

HB 0574 requires a provider to disclose to the Commissioner (i) the method in which a provider is calculating the estimated annual percentage rate (APR); (ii) the estimated APR given to a recipient; (iii) requiring a provider to retroactively calculate the actual APR and provide that to the Commissioner; and (iv) any other information in a report that the Commissioner deems necessary. This is extremely overreaching and is not required by any other state that has implemented a disclosure law. There is no indication that the Commissioner wants to receive this information or even has the capability at this time to process this type of information. These requirements are overreaching and should be stricken from HB 0574.

Definitions:

- **Provider:** 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.
- **Interest Accrued:** The legislation references “interest accrued,” without definition. Clarifications are necessary to provide certainty of the bill’s requirements and to help ensure the ability to provide accurate and meaningful disclosures.
- **Recipient:** The definition of “recipient” should be limited to businesses that are principally managed or directed from Maryland, and providers should be permitted to rely on either (1) a representation from the recipient, or (2) the business address provided by the recipient. This would parallel the approach taken by New York.
- **Total Repayment Amount:** HB 0574 defines “total repayment amount” as the “disbursement amount plus the finance charge”. This definition needs to be refined to address situations where the two amounts are not the same.

Renewal Financing:

- **Disclosure Requirements:** HB 0574 requires disclosures for renewal financing but provides no additional guidance on calculation or disclosure, which will likely cause confusion.
- **Double Dipping:** The bill also defines the term “double dipping,” which is not a formal term and fails to consider how renewal financing works in practice. 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].”

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 HB 0574 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.

Open-End Financing: Section 12-1207(A)(B) requires the disclosure of the credit limit along with the amount to be drawn at the time the offer is extended. There are two issues here. Firstly, it is not always known what the initial draw will be at the time the specific offer is presented to the recipient because the recipient is only selecting a credit limit, not a credit limit plus initial draw. Secondly, it appears that the entire disclosure for an open-end product is based on the assumption that the total credit limit is being drawn. For products like a commercial credit card or line of credit, where a customer is receiving access to the card or line with an available credit limit, requiring an initial disclosure with the credit limit and initial draw is not possible. As such, we recommend removing the requirement to disclose the initial draw and only require disclosure of the overall credit limit.

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Given how the uncertain inflationary economy 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. Therefore, ETA urges the committee to reject HB 0574 in its current form and welcomes the opportunity to work with the sponsor and proponents to develop a legislative proposal that is clear, fair, and uniform and 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.

Respectfully Submitted,



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