

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1478
Economic Matters

(Delegate Howard, *et al.*)

Commercial Law - Merchant Cash Advance - Prohibition

This bill prohibits a buyer from arranging, facilitating, or consummating a “merchant cash advance transaction” with a seller in the State. The bill defines “merchant cash advance transaction” as an arrangement between a buyer and a seller in which the buyer agrees to purchase an agreed-on percentage of future credit or debit card revenues that are due to a seller for a predetermined purchase price. The bill applies only prospectively and may not be applied or interpreted to have any effect on (or application to) any merchant cash advance transaction before the bill’s effective date. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division (CPD), can handle the bill’s requirements with existing resources.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Merchant cash advances are not addressed by State law.

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

CPD is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: The Office of the Commissioner of Financial Regulation (OCFR) advises that a merchant cash advance transaction (as defined in the bill) can be considered a subset of a commonly used source of business financing known as factoring. In a factoring transaction, the seller is typically a merchant that has sold a good or service, holds the resultant account receivable, and then sells that receivable at a discount to a third-party for cash. The party obligated on the receivable then pays its obligation to the third-party purchaser. OCFR further notes that factoring has been a part of commerce since the Mesopotamian times and is widely available in Maryland and throughout the United States.

Sales of accounts receivable are used by firms to obtain cash, typically in circumstances when their cash balance is insufficient to meet immediate or short-term cash needs. For example, companies may, from time to time, need cash to purchase inventory or goods, or to enter into contracts, and they face an imbalance between the time in which they expect their receivables to be paid (*i.e.*, converted to cash) and their more immediate need to make payments.

Small Business Effect: Any small businesses that utilize merchant cash advances, as defined by the bill, may be impacted, as the bill no longer allows such transactions. OCFR advises that small businesses are likely to engage in merchant cash advance transactions, as they accept credit card payments and those receivables are their greatest source of liquidity. As such, prohibiting the use of such transactions may remove a source of financing that has traditionally been available to small businesses in the State.

Additionally, prohibiting the use of merchant cash advance transactions may also affect small business lenders in the State that engage in these types of activities.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 913 (Senator Kramer) - Finance.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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